

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.9189 of 2014 (O&M)

Date of decision : 03.12.2016

National Insurance Company Limited

.....Appellant

Versus

Udit Anand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Suvir Dewan, Advocate for appellant.

Mr. Ashwani Arora, Advocate for respondents No.1 to 3.

Mr. Dinesh Maurya, Advocate for
Mr. G.S. Sandhu, Advocate for respondents No.6 and 7.

Ms. Shamsheer Kaur, Advocate for respondent No.8.

DARSHAN SINGH, J.

The present appeal has been preferred by the National Insurance Company Limited – insurer of truck bearing registration No.HR-58B-0182 *i.e.* the offending vehicle (respondent No.3 in the claim petition) against the award dated 02.07.2014, passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the “Tribunal”), in a petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby respondents No.1 to 3 - claimants have have been awarded compensation to the tune of ₹22,12,148/- on account of death of Rajesh Anand, in the motor vehicular accident which took place on 22.10.2008.

2. Notice of this appeal was given to all the respondents. Respondents No.4 and 5 *i.e.* the driver and owner of the truck bearing registration No.HR-58B-0182 were duly served for 29.01.2015 but in spite of their service, they did not appear to contest the present appeal.

3. Learned counsel for the appellant-Insurance Company contended that truck bearing registration No.HR-58B-0182 was being plied by respondent No.4 without any permit. The appellant-Insurance Company has moved an application before the learned Tribunal. The learned Tribunal has given a direction to respondents No.4 and 5 to produce the documents but in spite of that the copy of the permit was not produced which shows that the owner of the vehicle had no route permit, which is a violation of the terms and conditions of the insurance policy and the appellant-Insurance Company is entitled for the recovery rights. He contended that the point regarding permit was not touched at all by the learned Tribunal.

4. Learned counsel for the respondents No.1 to 3, 6 & 7 and respondent No.8 could not repel the aforesaid contentions raised by learned counsel for the appellant-Insurance Company.

5. I have duly considered the aforesaid contentions.

6. Respondents No.1 to 3 have filed the claim petition under Section 166 of the Act for grant of compensation on account of death of Rajesh Anand in the motor vehicle accident which took place on 22.10.2008. The claim petition was filed against the driver, owner and insurer of truck bearing registration No.HR-58B-0182 as well as the driver, owner and insurer of car bearing registration No.CH-02-2488. The

negligence was attributed to respondent No.4 the driver of the truck.

7. The learned Tribunal on appreciating the evidence came to the conclusion that there was no evidence to prove the negligence on the part of the driver of car bearing registration No.CH-02-2488. It was further held that death of Rajesh Anand has occurred on account of rash and negligent driving of truck bearing registration No.HR-58B-0182 by its driver. The learned Tribunal consequently held respondents No.4, 5 and the appellant-Insurance Company jointly and severally liable for payment of the amount of compensation.

8. The appellant-Insurance Company has alleged that as the truck in question was being plied without any permit, so the appellant-Insurance Company was entitled for the recovery rights. The perusal of the record shows that on 20.12.2012 the appellant-Insurance Company has moved an application seeking direction to respondents No.4 and 5 to supply the copy of the route permit, fitness certificate, copy of the insurance policy etc. to enable it to effectively contest the claim petition. On the basis of this application, the learned Tribunal passed the order dated 20.12.2012 directing the owner and driver (respondents No.4 and 5 in the present appeal) to supply the copy of the relevant documents on the next date of hearing but those documents were not supplied to the appellant-Insurance Company. Even in its evidence respondents No.4 and 5 have only produced the copy of the registration certificate, driving licence and insurance policy. Even at that time, the permit and fitness certificate of the truck in question were not produced. Thus, respondent No.5 the owner of the vehicle has not

produced the permit and fitness certificate of truck bearing registration No.HR-58B-0182 in spite of specific direction of the Court, which raises an adverse inference against the insured and the only irresistible conclusion which can be drawn is that he was plying the truck bearing registration No.HR-58B-0182 without any permit, which is clearly a violation of the terms and conditions of the insurance policy on the part of the insured. Surprisingly, the learned Tribunal has only mentioned in the findings under issue No.3 with respect to the driving licence of respondent No.1 and question of permit has not been touched at all.

9. As per Section 66 of the Act the owner of the vehicle can only use the transport vehicle in accordance with the conditions of the permit at any public place. Thus, the acquisition of the permit for a transport vehicle is mandatory as per the aforesaid provision of law. Reference can also be made to case ***National Insurance Co. Ltd. Vs. Chella Bharathamma 2004 (4) RCR (Civil) 399.***

10. Consequently, respondent No.5 insurer-owner of the vehicle has violated the terms and conditions of the insurance policy. So, certainly the appellant-Insurance Company was entitled for the recovery rights.

11. No other point was argued before this Court.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The appellant-Insurance Company is granted the recovery rights to recover the awarded amount paid by it or to be paid to the claimants in satisfaction of the award dated 02.07.2014 from

respondent No.5 the insured/owner of the vehicle by executing this very award.

03.12.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No