IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6624 of 2016(O&M)

Date of decision:10.11.2016

Rajinder Singh ….Appellant

VERSUS

United India Insurance Co. and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Achin Gupta, Advocate for the appellant.

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REKHA MITTAL, J.

The present appeal directs challenge against the award dated 16.07.2015 passed by the Motor Accident Claims Tribunal, Moga, (in short 'the Tribunal') awarding compensation in favour of Smt. Narinder Kaur and others in regard to death of Angrej Singh in a motor vehicular accident on 19.01.2014.

Balwant Singh (driver), Rajinder Singh (owner) and United India Insurance Company Kotkapura were held liable to pay compensation to the claimants but the insurance company was allowed recovery rights after discharging liability towards the claimants in view of findings of the Tribunal on issue No.5.

Counsel for the appellant, owner/insured of the offending vehicle has assailed the findings of Tribunal on the premise that non-possessing of a route permit by the owner/insured qua the truck in question does not give a valid defence to the insurance company under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, the

Tribunal has committed a serious error by holding that the driver and owner were plying the offending truck without a valid permit which amounts to breach of the terms and conditions of the insurance policy on the basis whereof the insurance company has been given recovery rights in the concluding para of the award. In support of his contention, he has referred to a Division Bench judgment of this Court **United India Insurance Co. Ltd. Vs. Subhash Chander and others, FAO No.3726 of 2006 decided on 18.08.2006**. Further reference has made to the judgments of Single Benches of this Court **Gurmeet Singh and another Vs. National Insurance Co. and others, 2014(3) RCR (Civil) 1013, Mehara Ram and others Vs. Jaspal Singh and others, 2014(5) RCR (Civil) 803 and Lakhwinder Singh Vs. Rukmani Mishra and others, 2016(3) Law Herald 2124**.

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the Tribunal.

Before adverting to the submissions made by counsel for the appellant, it is appropriate to deal with the judgments relied upon. In Subhash Chander and others' case (supra) the offending vehicle, truck bearing No.RJ-07-G-2333 did not have the requisite route permit to ply the vehicle on the route in question. It was not the case where there was no permit to ply a transport vehicle but there was no permit to ply the vehicle on a particular route. In the circumstances, this Court declined to accept appeal of the insurance company.

In Gurmeet Singh and another’s case (supra) and Mehara Rram and others case (supra), this Court held that mere absence of route permit is not a valid ground for the insurer to escape liability to indemnify the insured. In Lakhwinder Singh's case (supra), the truck in question was being operated in State 'H' though it has route permit only for State 'P' and in those circumstances, it was held that the insured has not violated the terms and conditions of the insurance policy.

In the case at hand, the vehicle in question is admittedly a transport vehicle. The insurance company examined Sukhwinderpal Singh, Junior Assistant from the office of RTA, Ferozepur. The witness stated that no route permit was issued from 30.12.2013 to 22.02.2014 pertaining to truck No.PB-04-R-9214. Counsel for the appellant has failed to point out any material on record that there was a permit issued qua truck in question in view of definition of permit in Section 2(31) of the Act. The matter would have been different had there been a permit issued by a competent authority prescribed under Section 2(31) of the Act but there would have been no permit to ply on the road on which the accident in question took place. In those circumstances, the appellant could seek advantage to his contentions from the referred authorities. In absence of permit to ply the vehicle on road, I am afraid the appellant cannot escape his liability to refund the amount of compensation payable/paid by the insurance company to the claimants on the ground that he is guilty of committing breach of terms and conditions of the insurance policy. In this context, reference can be made to judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Chella Bharathamma, 2004 (4) RCR (Civil) 399**. The Court held in para 8, quoted thus:-

> "8. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is

> clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a`-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable."

As in the present case, there was no permit to ply the vehicle in question, it amounts to infraction of the terms and conditions of the policy of insurance. The insurance company is certainly entitle to recovery rights against the insured, though otherwise it has no liability in the eye of law.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. This apart, the appeal has been preferred after an inordinate delay of 364 days but as the appeal has been decided on merit, application for condonation of delay is of academic relevance only.

NOVEMBER 10, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no