

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

FAO No.6753 of 2016 (O&M)

Date of decision : 22.11.2016

Bharti AXA General Insurance Company Ltd.

.....Appellant

Versus

Sia Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sanjeev Goyal, Advocate for appellant.

DARSHAN SINGH, J.

CM-23508-CII-2016

There is delay of 10 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 10 days in re-filing the present appeal is hereby condoned.

CM-23509-CII-2016

There is delay of 176 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is

allowed and the delay of 176 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the appellant-Insurance Company against the award dated 05.01.2016, passed by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter called the “Tribunal”) vide which respondent No.1-claimant has been awarded compensation to the tune of Rs.1,16,800/- on account of injuries suffered by him in the motor vehicular accident, which took place on 09.03.2014.

2. The present appeal has been preferred by the appellant-Insurance Company (who was impleaded as respondent No.3 in the claim petition) to assail the award.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Learned counsel for the appellant-Insurance Company contended that the vehicle in question was being plied without any permit, though the same was a commercial vehicle. He contended that permit was compulsorily required to ply a commercial vehicle. Thus, he contended that the appellant-Insurance Company was entitled for recovery rights against the insured who has violated the terms and conditions of the policy.

5. I have duly considered the aforesaid contentions raised by learned counsel for the appellant.

6. The vehicle involved in the present accident was TATA Ace bearing registration No.HR-37C-8116. As per the registration certificate of

the offending vehicle the unladen weight of this vehicle is 815 kilograms and gross weight is 1550 kilograms. Section 66 of the Motor Vehicles Act reads as under:-

“66. Necessity for permits. – (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good carriage either when carrying passengers or not :

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.]

(3) The provisions of sub-section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade

or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purposes as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(h) *** omitted

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(l) *** omitted

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any

place for purpose of repair;

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

7. As per Section 66 Sub-section 3 Clause (i) of the Act no permit is required for any goods vehicle where the gross vehicle weight does not exceed 3000 kilograms. It is not disputed that the vehicle involved in the present case was a goods vehicle. It is also not disputed that the gross weight of the vehicle was only 1550 kilograms which is far less than 3000 kilograms. Thus, in view of the aforesaid provision of law, there was no requirement of the permit. So, the learned Tribunal has not committed any illegality in fastening the liability upon the appellant-Insurance Company.

8. Consequently, the present appeal has no merits and the same is hereby dismissed.

22.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No