IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4604 of 2011
Date of Decision.09.11.2017

Rajesh Kumar and another ....Appellants

Vs

Smt. Nirmala and others ....Respondents

Present: Mr. D.S. Nirban (Rao), Advocate
for the appellants.

Mr. S.K. Yadav, Advocate for
for respondent Nos.1 and 2.

Mr. Pardeep Goyal, Advoate and
Mr. Abhishek Goyal, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The present appeal has been referred by the owner whereby the compensation to the tune of ₹14,35,260/- along with interest @6% per annum from the date of filing of the claim petition has been awarded to the claimants on account of death of deceased-Surender Kumar, who unfortunately died in a motor vehicular accident involving the bus bearing registration No.HR-39-7192.

Mr. Nirban, learned counsel appearing on behalf of the appellant submits that despite the fact that there was a subsisting legal and valid insurance policy at the time of the accident, which had taken place on 23.10.2009, liability has been fastened upon the owner on the premise that it did not have a valid route permit as envisaged under Section 66 of the Motor Vehicles Act. He submitted that the insurance company can take up the defences as available under sub-section 2 of Section 149 of the Motor

Vehicles Act and not beyond that, thus, there cannot be an objection *viz-a-viz* the non-compliance of provisions of Section 66 of the Motor Vehicles Act. The permit had already been produced on record, though according to the insurance company it was not legible but no steps have been taken by the insurance company to summon the witness from the Registering Authority where the vehicle was registered to ascertain this fact, therefore, in the absence of discharge of burden of proof, the liability cannot be fastened upon the owner. In support of his contention, he relied upon para 4 of the ratio decidendi culled out by Hon'ble Supreme Court in ***Kamala Mangalal and others Vs. United India Insurance Co. Ltd. and others 2010 ACJ 1441.*** He also relied upon judgment of Division Bench of this Court in ***National Insurance Company Limited Vs. Kamlesh Kaur and others 2006(3) RCR (Civil) 634***.

Per contra, learned counsel appearing on behalf of the insurance company submits that the condition envisaged under sub-clause (c) of clause (a) of sub-section 2 of Section 149 permits the insurance company to take up the plea of non indemnification. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Chella Bharathamma 2004(8) SCC 517*** and also judgment rendered by Coordinate Bench of this Court in ***Partap Singh Vs. National Insurance Company and others 2014(3) PLR 799*** to contend that the finding rendered by the Tribunal cannot be faulted with. There is no illegality and perversity, much less, fallacy in the finding rendered by the Tribunal in fastening the liability upon the driver and owner of the bus, thus, urges this Court for upholding the award passed by the Tribunal.

Learned counsel appearing on behalf of the claimants submits that owing to dispute between the insurance company and the owner, the amount of compensation has not been disbursed to the claimants except a sum of ₹4 lacs.

I have heard learned counsel for the parties and appraised the paper book. In order to appreciate the controversy raised on behalf of the respective counsel, it would be apt to reproduce provisions of Section 149 (2) as well as Section 66 of the Motor Vehicles Act:-

> *149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—*
>
> *(1) xxx xxx xxx xxx*
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> *(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—*
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> *(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—*
>
> *(i) a condition excluding the use of the vehicle—*
>
> *(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
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> *(b) for organised racing and speed testing, or*
>
> *(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
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> *(d) without side-car being attached where the vehicle is a motor cycle; or*
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> *(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or*
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> *(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

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 goods 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 the 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-trailor.

(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 purpose 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;

(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; 3[***]

(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 or 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.

On conjoint of the aforementioned provisions, it is evident that the insurance Company under the Act is entitled to take all possible objections as enshrined under Section 149 (2) and not all other provisions, therefore, reliance to Section 66 cannot be adhered to. No doubt, Hon'ble Supreme Court in ***Chella Bharathamma's case*** (supra) after relying upon the aforementioned provisions has given recovery rights to the insurance company but later on the judgment passed in ***Kamala Mangalal's case*** (supra) has dealt with the issue which is directly applicable to the facts of the case in hand. In the instant case, reference has also been made to order dated 06.12.2010 wherein an application was moved by the insurance company to seek an appropriate direction to produce the legible copy of the permit by the owner. Despite the same, it has been withheld.

In my view, it would not lie in the mouth of the insurance company to have discharged the onus. The Registration Certificate and the driving licence were already available on record. Nothing prevented the insurance company to summon witness from the concerned Registering Authority whereby the vehicle was registered to ascertain the factum of non-validity of the permit. Even otherwise, sub-clause (c) clause (a) of sub-section 2 of Section 149 of the Motor Vehicles Act that provides for not allowing the vehicle if the same is being used for the purpose other than allowed by permit, in my view, would not strictly apply to the route permit as per Section 66 but would be in a case where a permit meant for carrying the passengers was found to be used for carrying goods or for any another purpose. Such a breach has not been established on record to seek exoneration.

The aforementioned facts and the proposition of law, much less, statutory provisions have not been noticed by the Tribunal, thus, in my view there is fallacy and illegality. Resultantly, the finding of the Tribunal in fastening the liability upon owner is hereby set aside. The liability to satisfy the claim shall be upon insurance company and the insurance company is directed to satisfy the award passed by the Tribunal within a period of two months from the date of receipt of certified copy of this order with the same amount of interest as provided by the Tribunal from the date of filing of the claim petition, failing which it shall entail interest @12% per annum. The owner shall be entitled to seek refund of the amount of ₹4 lacs the moment insurance company satisfied the complete award by discharging liability. In other words, the claimants are directed to refund the amount of ₹Rs.4 lacs on receipt of entire amount of compensation from the insurance company.

The award passed by the Tribunal is modified to the above extent and the appeal is allowed in the above terms.

(AMIT RAWAL)
JUDGE

November 09, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes