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

FAO No.4512 of 2012 (O&M)
Date of Decision.30.11.2017

Santokh Singh ....Appellant

Vs

Som Nath and others ....Respondents

2. **FAO No.4513 of 2012 (O&M)**

Santokh Singh ....Appellant

Vs

Surjan Singh and others ....Respondents

3. **FAO No.4574 of 2012 (O&M)**

Santokh Singh ....Appellant

Vs

Shiv Kumar and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for the insurance company.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.19519-CII of 2012 in FAO No.4512 of 2012
C.M. No.19525-CII of 2012 in FAO No.4513 of 2012
C.M. No.19978-CII of 2012 in FAO No.4574 of 2012

For the reasons stated in the applications, delay of 1, 3 & 3 days in filing the respective appeals is condoned.

Applications are allowed.

Main cases

This order of mine shall dispose of three appeals bearing

Nos.4512, 4513, and 4574 of 2012 filed by the owner against the award passed by the Tribunal whereby the liability to pay the compensation has been fastened upon him by according recovery rights to the insurance company.

Mr. Mamli, learned counsel appearing on behalf of the owner submits that the only ground on which the insurance company has been absolved by giving recovery right is that the truck bearing registration No.PB-23F-4193 did not have a valid permit for plying in the State of Haryana, where, the accident had taken place. The insurance company cannot take defence as provided under Section 149 (2) and not under Section 66 of the Motor Vehicles Act, therefore, the finding rendered by the Tribunal is liable to be set aside.

Even otherwise non-holding of the permit was not material for causing accident and therefore, the insurance company cannot claim exoneration. The truck had a permit of Punjab that does not mean that it cannot ply in the State of Haryana.

On the contrary, Mr. Ashwani Talwar, learned counsel appearing on behalf of the insurance company submits that defence of non-permit is available under the provisions of Section 149(2a)(i)(c) of the Motor Vehicles Act i.e. the insurance company can claim exoneration in case the vehicle is plied for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle. He further submits that the vehicle in question was a truck and did not have a valid permit. He relied upon the judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Challa Bharathamma and others (2004) 8 SCC 517; New India Assurance Company Limited Vs. Asha Rani and***

others (2003) 2 SCC 223 and ***National Insurance Company Limited Vs. Nicolleta Rohtagi and others (2002) 7 SCC 456,*** which has been reiterated in ***M.S. Middle High School Vs. HDFC Ergo General Insurance Co. Ltd. and others*** passed in Special Leave Petition (Civil) No.31406 of 2017 decided on 22.11.2017.

In view of the aforementioned ratio decidendi rendered by the Hon'ble Supreme Court, he urged that the award passed by the Tribunal cannot be tinkered with, thus, urges this Court for dismissal of the appeals filed by the owner.

I have heard learned counsel for the parties and appraised the paper book. The aforementioned facts are not controverted. Concededly, the offending truck did not have permit to ply in the State of Haryana whereas the accident had taken place in the area of Police Station, Smalkha, Haryana. For the sake of brevity, the provisions of sub-section 2 of Section 149 of the Motor Vehicles Act are reproduced herein below:-

> "*149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—*
>
> *(1) xxxxxx xxxxxx xxxxxx*
>
> *(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:—*
>
> *(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
(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
(d) without side-car being attached where the vehicle is a motor cycle; or
(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
(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.

In my view, the insurance company, can seek exoneration from indemnification on account of the non-holding of the permit, as the truck i.e. a transport vehicle did not have valid permit for plying in the State of Haryana. The law to that extent is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Challa Bharathamma's case (supra)***, which has been reiterated by Hon'ble Supreme Court in ***M.S. Middle High School's case*** (supra). For the sake of brevity the finding rendered by the Hon'ble Supreme Court reads thus:-

"Heard.

We do not find any ground to interfere with the impugned order.

*The High Court rightly held that once there is breach of condition of policy, the liability cannot be fastened on the insurer. The High Court had relied upon decisions of this Court in **National Insurance Co. Ltd. Vs. Challa Bharathamma and others (2004) 8 SCC 517; New India Assurance Company Limited Vs. Asha Rani***

> ***<u>and others (2003) 2 SCC 223</u>*** *and* ***<u>National Insurance Company Limited Vs. Nicolleta Rohtagi and others (2002) 7 SCC 456.</u>***
>
> *The contrary view in <u>Augustine V.M. V. Ayyappankutty and ors.</u> 2015(1) TN MAC (FB) (Ker.) cannot thus be held to be valid and is disapproved to the extent holding that insurer was liable even if there was breach of conditions of policy.*
>
> *The special leave petition is accordingly dismissed.*
>
> *Pending applications, if any, shall also stand disposed of."*

In view of the latest law, I am of the view that there is no merit and force in the submissions of Mr. Mamli seeking, setting aside of the recovery rights given to the insurance company. As an upshot of my finding, the award passed by the Tribunal cannot be faulted with. No ground for interference is made out. All the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

November 30, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No