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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-966-2012 (O&M)
Date of decision : 02.12.2017

Bajaj Allianz General Insurance Company Ltd.

... Appellant(s)

Versus

Jal Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Priya Deep, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. John Kumar, Advocate
for respondent No.5.

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AMIT RAWAL, J. (ORAL)

The present appeal has been preferred by the Bajaj Allianz General Insurance Company Ltd., for granting the recovery rights viz-a-viz the owner, on the premise that the vehicle in question i.e. truck bearing Registration No.UP-13L-6249, insured with the appellant-Insurance Company did not have the route permit.

Ms. Priya Deep, Advocate for Mr. Ashwani Talwar, Advocate appearing on behalf of the appellant-Insurance Company submits that the the findings of the learned Tribunal as recorded in para 25 of the award are not only perverse, but against the settled proposition of law. Serving of notice upon the owner and driver, calling upon them to produce route permit was sufficient requirement of law of discharging the onus viz-a-viz the alleged breach of the terms and conditions of the policy. In support of her contentions, she relies upon the *ratio decidendi* culled out by Hon'ble the

Supreme Court in ***"National Insurance Company Ltd. V/s Chella Bharathamma, 2004 (8) SCC 517*** and ***"New India Assurance Company Ltd. V/s Asha Rani and others" 2003 (2) SCC 223.***

She has also relied upon the statement of PW-1 Shri Jai Raj Singh, Assistant Ahlmad in the court of Shri Amit Sehrawat, learned JMIC Palwal, who produced the summoned record and stated that the file did not contain any valid route permit, thus, urges this Court for setting aside the award by granting recovery rights to the Insurance Company.

On the contrary, Mr. John Kumar, learned counsel appearing on behalf of the respondent(s)-Owner submits that no recovery rights can be given to the Insurance Company as it has miserably failed to prove the breach of terms and conditions of the policy. Even postal receipts Ex.R2 to Ex.R-6 have not been produced on record, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the statement of PW-1 Jai Raj Singh, Assistant Ahlmad and as well as the findings rendered in para 25 of the Award, which reads as under:-

> *"Statement of PW-1*
> *Shri Jai Raj Singh, Assistant Ahlmad in the court of Shri Amit Sehrawat, learned JMIC Palwal. On S.A.*
> *I have brought the summoned file of case titled State Versus Intzar son of Asan Ali. Accused has been charge-sheeted and the case is now fixed for PWs to 3.2.2011. The vehicle bearing its registration No.UP-13-L-6249 was released on superdari by the court vide its order dated 4.5.2009 to its registered owner for which superdinama was furnished by Ajay Kumar Garg*

being owner of the vehicle. As per recovery memo dated 21.4.2009 the original driving licence in the name of accused and the original registration certificate pertaining to vehicle UP-13L-6249 were taken into possession by the police and correct photostat copies thereof are Ex.P1 and Ex.P2. The original insurance policy is attached with the summoned file and the correct photocopy thereof is Ex.P-3.

XXXX on behalf of respondent No.3

It is correct that I am deposing on the basis of record brought by me. I have no personal knowledge of this case. As per recovery memo dated 21.4.2009 and report under Section 173 Cr.P.C. no route permit or fitness certificate are attached on the summoned pertaining to vehicle No.UP-13L-6249.

Para 25.

As far as argument advanced on behalf of respondent Insurance Company in this case regarding non-availability of route permit and fitness certificate is concerned, I do not find substance in argument of learned counsel for respondent No.3. It has not been established by the insurer that route permit or fitness certificate was instrumental in causing the present accident. Secondly, mere serving of notice upon respondent is not sufficient to discharge the onus which heavily lies on Insurance Company. Therefore, notice and receipts Ex.R-2 to Ex.R-6 served by respondent No.3 upon insured to produce route permit and fitness certificate is not sufficient to discharge the onus which heavily lies upon the Insurance Company to prove that the insured has violated the terms and conditions of the insurance policy. Therefore, in these circumstances the amount of compensation is to be paid by respondent Nos.1 to 3 jointly and severally. Thus, this issue is decided in favour of the petitioners"

On cumulative reading of the aforementioned statement and as well as the findings rendered in para 25 of the award, I am of the view that learned Tribunal has abdicated in not discharging the obligation in referring to the statement of PW-1, much less, fact that the Insurance Company had discharged the onus of making an effort calling upon the owner and the driver to produce the route permit to prove the breach of the terms and conditions of policy. It was a sufficient requirement of law to do so. Even otherwise, non-existence of the route permit would be a breach of the terms and conditions of the policy dehors of the fact that whether it was instrumental in causing the accident or not. The aforementioned view of mine is derived from the *ratio decidendi* culled out by Hon'ble the Supreme Court in ***Chella Bharathamma's case*** (supra), which is being reiterated in the latest judgment dated 22.11.2017 passed by Hon'ble the Supreme Court in ***SLP (C) No.31406 of 2017*** titled as ***"M.S. Middle High School V/s HDFC Ergo General Insurance Company Ltd. and others"***.

No other contrary law or judgment has been cited on behalf of the owner, thus, I am of the view that the recovery rights are required to be granted to the Insurance Company as there was a breach of the terms and conditions of the policy.

Resultantly, the award of the learned Tribunal is modified to the extent that the recovery rights are given to the Insurance Company to recover the amount of compensation stated to have been paid to the claimants from the owner/respondent No.5, in accordance with law.

The appeal stands allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

02.12.2017
Yogesh Sharma

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**