IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.5125 of 2013(O&M)
Date of Order: 16.11.2017

Banshidhar **..Petitioner**

Versus

Smt. Krishna and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate,
for the appellant.

Mr. Amrinder Sidhu, Advocate and
Mr. Aman Mittal, Advocate,
for respondent no.4-Insurance Company.

ANIL KSHETARPAL, J (Oral)

The insured owner is in appeal against the recovery rights given to the Insurance Company as per the award passed by the Motor Accident Claims Tribunal, Narnaul.

Learned counsel for the appellant has submitted that the vehicle was being used for the purpose for which it was granted the permit. He further submitted that merely because the vehicle was not being driven at a place, as authorised by the permit, insured cannot be fastened with liability to pay the compensation. In this regard he has referred to three judgments passed by this Court, which are reported as under:-

(i) ***Future General Insurance Co. Ltd. v. Smt. Surjo Devi and others, 2013(2) R.C.R.(Civil) 564.***

(ii) ***Sunil Kumar v. Ramveer Singh and others, 2013(1) PLR 849***

(iii) ***Hans Raj Chaudhary* v. *Smt. Nanhi Devi and others, 2012(4) PLR 694.***

It will be noticed that this Court has noticed the judgment passed by the Hon'ble Supreme Court reported as ***National Insurance Co. Ltd.* v. *Chella Bharathamma, 2004(4) R.C.R.(Civil), 399***.

On the other hand, learned counsel for the Insurance Company has relied upon the judgment, which has already been noticed above i.e. ***National Insurance Co. Ltd.* v. *Chella Bharathamma, 2004(4) R.C.R. (Civil), 399***.

As per the insurance policy, copy whereof has been produced before me, Clause **"Limitation as to use"** reads as under:-

> "***Limitations as to use:*** *The Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988, or such a carriage falling under Sub Section 3 of Section 66 of the Motor Vehicles Act, 1988. The policy does not cover (i) Use for organised racing, pace making, reliability trails or speed testing. (2) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle.*

A careful reading of the policy would shows that policy covers use only under the permit within the meaning of the Motor Vehicles Act, 1988. Section 66 of the Motor Vehicles Act, 1988 makes a provision for necessity of the permit. It is provided that no owner of a motor vehicle shall use or allowed to use the vehicle for a particular purpose unless it has got permit.

It is not disputed before me that the insured vehicle had the permit for transporting the passengers. The only allegation is that the permit was given to the owner with respect to ply the vehicle in the territory of the State of Rajasthan, whereas it was found plying in the State of Haryana.

In the considered opinion of this Court, such violation of the permit can only entail penalty. The purpose for which the vehicle was being used remains the same. The permit granted to the insured was for plying and carrying passengers and at the time of accident the vehicle was being used for carrying passengers only. The judgment relied upon by the learned counsel for the Insurance Company would not apply in such facts. In this Case, the Hon'ble Supreme Court was dealing with a situation where a vehicle was being plied without the permit. In that context, the Hon'ble Supreme Court observed that the vehicle cannot be placed at a better pedestral viz.-a-viz. who has the permit. Section 66 of the Motor Vehicles Act, 1988 only deals with the purpose of which the vehicle was plied.

Respectfully following the judgments passed by this Court referred to above, the appeal is allowed and the award passed by the Motor Accident Claims Tribunal, Narnaul, to the extent of grant of recovery rights given to the Insurance Company is set aside.

November 16, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No