251 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 9028 of 2014 (O&M)
DECIDED ON: FEBRUARY 27, 2017

NATIONAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

PARVEEN KUMAR & ANOTHER

....RESPONDENTS

AND

FAO No. 9034 of 2014 (O&M)

NATIONAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

KITABO & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Neeraj Khanna, Advocate
for the appellant-Company.

Mr. Gaurav Gaur, Advocate
for the respondent No.2-Bhagat Ram in both the appeals.

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JASPAL SINGH, J

Vide this common order, I intend to dispose of two appeals i.e. FAO No. 9028 of 2014 titled as National Insurance Company Ltd. vs. Parveen

Kumar and Bhagat Ram and FAO No. 9034 of 2014 titled as National Insurance Company Ltd. vs. Kitabo and Bhagat Ram, as in both the appeal common question of law and fact with regard to route permit and its violation is involved.

For the appraisal of matter in controversy the facts have been extracted from MACP 738 of 2003 titled as Parveen Kumar vs. Bhagat Ram and another. On October 27, 2012, he (Parveen Kumar) was going towards Zirakpur alongwith his mother Kitabo Devi from his residence situated at HMT Colony Pinjore while driving his motorcycle bearing registration No. HR-49-B-6311 at a very normal speed. When he had crossed the Chandimandir Chowk, a truck bearing registration No. HP23-5431 being driven by respondent No.1-Bhagat Ram in a rash and negligent manner, without blowing any horn overtook his motorcyle and in this process hit his motorcycle, due to which, they fell down on the road and sustained severe and multiple injuries on various parts of their bodies. Immediately, they were rushed to Alchemist Hospital, Sector 21, Panchkula for treatment. Regarding the accident in question, an FIR No. 239 dated Octobr 28, 2012 was registered under Sections 279, 337 of the Indian Penal Code at Police Station Chandimandir. The claimant(s) further alleged that due to the injuries suffered by them in a vehicular accident, they have suffered a lot. They also remained under treatment for a considerable period. Since, the accident in question had been caused by the rash and negligent driving of truck bearing registration No. HP-23-5431 by respondent No.1-Bhagat Ram, who is also its owner and insured with respondent No.2-National Insurance Company Ltd.

The claim petition(s) were resisted by owner/driver as well as insurance company and ultimately the same were decided vide impugned awards dated July 11, 2014 specifically holding the joint liability of owner/driver as well as that of Insurance Company.

The main question for determination in both these appeals are whether the insurance company (hereinafter referred as insurer) is liable for indemnifying the impugned awards when there is a violation of condition of permit envisaged in Section 149(2) of the Motor Vehicle Act, 1988 (for short 'Act').

The contention of learned counsel for the appellant-Insurance Company is that the appellant is not liable to pay an amount of compensation or to indemnifying the awards of compensation, as there was no route permit. An application was moved by the appellant for the production of route permit by the owner but even then no route permit was produced pertaining to offending vehicle and in such a situation no liability should have been fastened upon the appellant-company by learned tribunal. The liability to pay the compensation fastened by learned Tribunal and findings recorded by learned Tribunal in this regard as well as award are not sustainable in the eyes of law and deserves to be modified.

On the other hand learned counsel for respondent-Bhagat Ram has supported the impugned awards submitting that it is not the requirement of law that a route permit should be there, especially, in the circumstances that the accident is proved, which has occurred due to rash and negligent driving of truck bearing registration No. HP-23-5431 by its driver/owner, especially in the circumstances that the offending vehicle is duly insured with the appellant-company.

After bestowing due to consideration to the afore-said submissions made by learned counsel for the parties and appraisal of evidence as well as scanning of impugned awards, this Court is of the considered view that non production of route permit is a violation of defence available to the insurance company, as provided under Section 149(2) of the Act.

An identical question was came up for hearing before the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs. Chella Bharathamma; 2004 (4) RCR (Civil) 399;*** in which it was observed that a person plying the offending vehicle without permit cannot be placed at a better pedestal *vis-a-vis* one who has a permit, but has violated any condition thereof and in such a situation insurer cannot be made liable for such vehicle. It was also categorically observed by Hon'ble Apex Court in this regard in para 8 and 9 of its judgment, which reads as follows:

> "8. *"High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.*
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> *9. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not*

be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall made payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

Similar view has been taken by this Court in the case ***M/s Bhagwi Golden Transport Company vs. Smt. Urmilla Devi and others;*** ***2014 (4) RCR (Civil) 560;***

While relying upon ***J.B. Piles vs. Madan Lal 2008;*** ***Accident Claims Journal, 574;*** it was held that when the route permit of the vehicle did not cover the part of the State but entered and cause accident, the Insurance Company cannot be directed to pay the compensation.

Adverting to the facts of the case in hand the owner/driver did not produce the route permit despite, the application was given for its production and further that no route permit was available on judicial file as proved by PW-2 Sanjay Kumar, Criminal Ahlmad. So the absence of route permit in the case in hand can be termed to be violation of defence envisaged in Section 149(2) Act and as such the insurance company, cannot be held liable. However, since the offending vehicle was duly insured with the appellant-company and in view of the observation made by Hon'ble Apex Court in National Insurance Company's case (supra), the insurance company shall be liable to first indemnify the insurer. However, it shall have the right to recover the amount of compensation from the insured .

With the afore-said modification, both these appeals i.e. FAO No. 9028 of 2014 and FAO No. 9034 of 2014 are allowed.

No order as to costs.

FEBRUARY 27, 2017 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*