

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO 7555 of 2015 (O&M)

Date of decision: September 26th, 2017

M S Middle High School and another

..... Appellants

Versus

Usha and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gopal Mittal, Advocate
for the appellants

Mr. Pradeep Kumar, Advocate
for the respondents

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Rekha Mittal, J.

The insured/owner and driver of school bus bearing HR 65-0548 have filed the present appeal to challenge findings of the Tribunal that the offending vehicle did not possess a permit constituting a valid defence for the insurance company, therefore, the insurance company shall be entitled to recover the amount of compensation from the driver and owner of the offending vehicle after payment to the claimants, while deciding issues No. 1 to 3 and 2A jointly.

Counsel for the appellants would urge that the deceased was not travelling in the bus in question when the occurrence in question took place resulting in death of Sher Singh. It is further argued that as the offending vehicle is a school bus, there is no requirement in law to have a route permit. Another submission made by counsel is that the Tribunal has

not correctly appreciated testimony of Jasbir Singh (RW3), Clerk from the office of Regional Transport Authority, Kurukshetra who deposed that receipt Ex. R4 with regard to deposit of Rs.850/- by the insured was issued by their office. In support of his contentions, he has referred to judgment of the Kerala High Court ***Sethunath v John Varghese, 2011 (1) Civil Court Cases 822*** affirmed by Hon'ble the Supreme Court of India in a petition for leave to appeal (CC) 16038-16045 of 2011, decided on 10.10.2011, a Division Bench judgment of this Court ***National Insurance Company Limited v Kamlesh Kaur and others, 2006 (3) R.C.R. (Civil) 634***, Single Bench judgements of this Court ***M/s Yadwindra Public School, SAS Nagar, Mohali v Seema and others, 2010(2) R.C.R. (Civil) 50*** and ***Green Wood Public Senior Secondary School v. M/s Reliance General Insurance Company and others*** (FAO No. 4019 of 2010, decided on 16.07.2014).

Counsel representing the insurance company has supported findings of the Tribunal that as the school bus (LTV) falls within the definition of Transport Vehicle under Section 2(47) of the Motor Vehicles Act, 1988 (in short, 'the Act') which requires a permit for being plied at a public place, in terms of Section 66 of the Act and as there was no permit of the bus in question, it constitutes a valid defence in favour of the insurer, under Section 149 (2) of the Act, exonerating the company from its liability to pay compensation, therefore, the Tribunal has rightly granted recovery right in favour of the insurer and against the insured and driver of the offending vehicle.

With regard to receipt Ex.R4 relied upon by the appellants, it is

submitted that even if the insured had deposited some money to enable it to get a permit, the same would not automatically operate to accept contention of the appellants that the insured was possessing a permit on the date of occurrence to ply the vehicle at public place. In addition, it is argued that Jasbir Singh (RW3) has categorically stated that the amount was deposited without order of any competent authority. It has further been argued that the judgments relied upon by counsel for the appellants rendered by Division Bench and Single Benches of this Court relate to route permit and not the permit, therefore, the appellants cannot derive any advantage to their contentions from the referred authorities. Further argued that judgment passed by the Kerala High Court, referred to above, pertains to entirely different facts and has got no bearing on the case at hand. On the other hand, he has placed reliance upon judgment of Hon'ble the Supreme Court of India ***National Insurance Company Limited v. Chella Bharathamma and others***, Vol. CXXXIX (2005-1) PLR 102. Further reference has been made to judgments by Single Benches of this Court ***Partap Singh v National Insurance Company and others*** (FAO 4922 of 2014, decided on 16.07.2014), ***Shri Ram General Insurance Company Limited v. Surender Singh and others*** (FAO 5339 of 2013, decided on 21.09.2016) and ***Rajinder Singh v. United India Insurance Company and others*** (FAO 6624 of 2016, decided on 10.11.2016).

I have heard counsel for the parties and perused the paper book particularly the award impugned.

Indisputably, Bus bearing No. HR-65-0548 has been registered as School Bus (LTV). It is also not denied that previously the Bus in

question was being plied by M S Middle High School Village Jhansa under permit (Ex.R5) valid from 28.04.2009 to 12.03.2013. It is also not disputed that on expiry of the permit, it was not renewed with effect from the date of its expiry or any subsequent date. Counsel for the appellants has not disputed that on 05.05.2014, the date of occurrence, there was no permit to ply the bus in question at public place. It is not denied that the vehicle falls within the definition of Transport Vehicle requiring a permit under Section 66 of the Act. It is not plea of the appellants that the vehicle despite being a transport vehicle falls within any of the exceptions provided in Section 66 of the Act.

The question that calls for determination is '*whether the Tribunal has committed an error much less illegality by upholding plea of the insurance Company that it has no liability to pay compensation in the eye of law though the Tribunal has directed the insurance Company to pay compensation to the claimants being third party with a right of recovery against the driver and owner of the offending vehicle?*'

Hon'ble the Supreme Court of India in *Chella Bharathamma's* case (supra) by taking into consideration the provisions of Sections 149 (2) and 66 of the Act and judgments of the Court in ***New India Assurance Company Limited v. Asha Rani, (2003-1)133 P.L.R.1(S.C.)*** and ***National Insurance Company Limited v Nicolleta Rohtagi, (2002-3)132 P.L.R. 621 (S.C)*** has held in paras 12 and 13, quoted thus:-

“12. 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.

13. 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 the 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 make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization 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.”

Reading of the aforesaid extract leaves no manner of doubt that plying of a vehicle without a permit is an infraction. Under Section 149 (2) of the Act, defence is available to the insurer on that aspect. If the claim of the insurer raising defence under section 149(2) of the Act is accepted, 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. The insurer can recover the amount paid from the owner and shall not require to file a separate suit for the purpose.

The Division Bench judgment in *Kamlesh Kaur's* case (supra) does not support contention of the appellants nor can appellants seek benefit of wrong head note prepared by the Reporter. This Court, in para 5 of the judgment has held that the arguments that a route permit was required within the State of Haryana raised by Counsel for the insurance company-appellant is devoid of merit because it was not the pleaded case of the insurance company-appellant before the MACT. No witness or document has been produced on record by the insurance company-appellant to show that no permit was obtained by owner of the vehicle or any route permit for a goods vehicle within the State of Haryana was required. The insurance Company - appellant even failed to cross examine the Criminal Ahlmad, who had appeared as PW2 along with the Registration Certificate of the offending vehicle to show as to whether the vehicle was registered as a goods vehicle or the vehicle was granted any permit. It may be true that a

permit for goods carrier may be required under Section 66 of the Act, but there is no requirement of acquiring a route permit for such a vehicle within the State as projected by the insurance company-appellant. In any case it has to be proved on record that the vehicle was not granted any permit. The defences of the insurance company-appellant are confined to those which have been referred to in sub section (2) of Section 149 of the Act particularly with regard to liability towards third party.

Counsel for the appellants has failed to advance any meaningful arguments as to how the judgment passed by the Division Bench in *Kamlesh Kaur's* case (supra) supports contention of the appellants that the insurance company has been wrongly allowed right of recovery against the insured. In the referred authority, plea of the insurance was in respect of a route permit and not a permit to ply a goods vehicle at public place.

A co-ordinate Bench of this Court, on a detailed consideration of Division Bench Judgment in *Kamlesh Kaur's* case (supra) has held in *Partap Singh's* case (supra) in para 7, reads as follows:-

“7. Learned counsel for the appellant is completely wrong in making reliance on this judgment to make it appear as though the court was holding that no permit is necessary for goods vehicle. The Division Bench does not hold so in any part of the judgment. If, at all, the head notes by the publisher, is erroneous and misleading. The judgment, on the other hand, FAO No. 4922 of 2014 records a point of law that it is the duty of the insurer to plead breach of violation of the terms and in that case the insurer had not proved the breach. The Division Bench was not making any exception to the judgment of Chella Bharathamma. On the other hand,

in this case the decision in the Chella Bharathamma's case squarely apply.”

I agree with the observations made in *Partap Singh's* case (supra) that the Division Bench judgment in *Kamlesh Kaur's* case (supra) does not make any exceptions to the judgment of *Chella Bharathamma's* case (supra). It further appears that the appellants quoted the Division Bench judgment by reading wrong headnote prepared by the Reporter but without correctly appreciating the observations recorded in para 5 of the judgment. Under the circumstances, the appellants cannot derive any advantage to their contentions from the Division Bench judgment.

Reliance upon Single Bench judgments in *M/s Yadwindra Public School and Green Wood Public Senior Secondary School's* case (supra) is also misplaced as these judgments pertain to route permit and not a permit. A school Bus (transport vehicle) may not require a route permit but it requires a permit in compliance with the provisions of Section 66 of the Act. There is no dispute that non-possession of a route permit or deviation from a route permit may not constitute a valid defence in favour of the insurance company under Section 149 (2) of the Act, therefore, any judgment dealing with route permit would not come to rescue of the appellants to find fault with findings of the Tribunal that the insured did not possess a permit to ply the bus in question at public place, constituting a valid defence in favour of the insurance company, thus, entitling the insurance company to claim exoneration from its liability even though it has been fastened with liability to satisfy the third party claim.

This brings the Court to judgment of the Kerala High Court in *Sethunath's* case (supra). The vehicle involved in the accident was an

ambassador Car that knocked down two pedestrians on July 17,2004. The High Court while considering the fact that the vehicle needed a permit only when it is used as a transport/commercial vehicle for carrying passengers for hire or reward and Rule 82 of the Central Motor Vehicles Rules, in view of observations recorded in paras 17 to 21 of the judgment, accepted plea of the insured that the insurer cannot claim exoneration from its liability to indemnify owner of the vehicle in question. A careful reading of the judgment would make it evident that the same cannot be read in the manner as projected by counsel for the appellants that if the vehicle which requires a permit under Section 66 of the Act and causes accident resulting in injury to a third party, defence under Section 149(2) of the Act is not available to the insurance company in case at the time of accident, it did not carry passengers or goods, as the case may be. The judgment was rendered by Kerala High Court in view of peculiar facts and circumstances detailed therein, therefore, the same does not lend any support to plea of the appellants.

To be fair to the appellants, counsel has tried to derive some mileage from receipt Ex R4 with regard to deposit of an amount of Rs.850.00 with the concerned Transport authority. Counsel for the appellants has failed to point out any provisions in law/rules that merely because owner of a transport vehicle has deposited some money/fee with the authority concerned, it would amount to issuance of a permit in his favour. In other words, if the owner of a transport vehicle has deposited fee/charges with the authority concerned, it either creates a mandate for the authority to issue a permit much less constituting a permit being possessed by the

insured. In this view of the matter, the appellants cannot derive any advantage from the factum of deposit of Rs.850/-.

In view of the discussions made here-in-before, findings of the Tribunal that the offending vehicle did not possess a permit at the relevant time and the same constitutes a valid defence in favour of the insurance company under Section 149 (2) of the Act are liable to be affirmed and ordered accordingly.

The Tribunal has conferred recovery right in favour of the insurer and against the owner and driver of the offending vehicle. It is an obligation of the insured to have a permit under Section 66 of the Act. The defences under Section 149(2) of the Act are available to the insurer only against the insured and not driver of the vehicle. As per the settled position in law, the driver of a vehicle is not a privy to contract of insurance between the insurer and the insured. Under the circumstances, the insurer cannot claim right of recovery against driver of the offending vehicle. As such, findings of the Tribunal giving recovery right against driver of the offending vehicle as well cannot stand the test of judicial scrutiny and ordered to be set aside.

For the foregoing reasons, the appeal filed by the owner/insured is dismissed but the appeal preferred by the driver is allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

September 26th, 2017

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