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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 09th October, 2017

+ **MAC.APP. 401/2016 and CM Nos.17603/2016 & 17568/2017**

MOHD MANZOOR & ANR

..... Appellants

Through: Mr. Ashwani Kumar Sood and Mr.
Vishal Vimal, Advocates

versus

KHUYABUDA KHATUN & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The motor vehicular accident that occurred on 14.08.2013 resulting in the death of Nisar Udin @ Mohd. Nissar, it becoming the cause of action for accident claim case (suit no.789/2013) in favour of the first to fifth respondents (collectively, the claimants) involved negligent driving by the second appellant (driver) of a motor vehicle described as Tata 709 Truck bearing registration no.DL-1LE-5066 (vehicle), which is registered in the name of the first appellant (owner) and was concededly insured against third party risk for the period in question with the sixth respondent (insurer).

2. While contesting the claim case, the insurer had raised the plea of breach of terms and conditions of the insurance policy, *inter alia*, on the ground that the vehicle was not covered by a valid permit. The

Motor Accident Claims Tribunal (Tribunal) decided the claim case by judgment dated 04.07.2015 and, while awarding compensation in favour of the claimants and directing the insurer to pay, granted it recovery rights against the appellants for the reason that the vehicle though covered by a national permit there was no sufficient compliance with the requirements of law in that there was no “authorization”, a fact brought out through the testimony of Prem Malik (R3W2), an official of the transport authority.

3. It is the abovesaid grant of recovery rights which is challenged by the appeal at hand.

4. A division bench of Kerala High Court had the occasion to go into similar issues in a judgment reported as *MC Sunil Vs. Regional Transport Officer, Palakkad and Ors.*, AIR 2005 Kerala 221. Since the view taken in the said judgment commends itself being followed in view of the relevant provisions of law, the relevant observations appearing therein need to be referred to.

5. Section 88 of the Motor Vehicles Act, 1988 defines “national permit” by clause (c) of the explanation appended thereto to mean “*a permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous States, not being less than four in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application*”. Mere taking of a national permit from the State Transport Authority is not sufficient to allow a vehicle to be plied outside the State. For such purposes i.e. plying the vehicle outside the State where it is registered, there is a need for

“authorization”. Such authorization is issued by the State Transport Authority upon payment of “authorization fee”, an expression which is defined by clause (b) in the explanation appended to Section 88 of the Motor Vehicles Act so as to mean *“the annual fee not exceeding one thousand rupees, which may be charged by the appropriate authority of a State to enable a motor vehicle, covered by the permit referred to in sub-sections (9) and (12) to be used in other State subject to the payment of taxes or fees, if any, levied by the States concerned”*.

6. Rule 87 of the Central Motor Vehicles Act, 1989 being relevant may be quoted as under :-

87. Form, contents and duration of authorisation.—(1) An application for the grant of an authorisation for a national permit shall be made in Form 46 and shall be accompanied by a fee of Rs. 500 per annum in the form of a bank draft.

(2) Every authorization shall be granted in Form 47 subject to the payment of the taxes or fees, if any levied by the States concerned.

(2A) The authority which grants the authorisation shall inform the State Transport Authorities concerned the registration number of the motor vehicle, the name and address of the permit holder and the period for which the said authorisation is valid.

(3) The period of validity of an authorisation shall not exceed one year at a time.”

7. A perusal of form 47, as is referred to in the above mentioned Rule, would show that the authorization has to indicate the States where the vehicle is authorized to ply.

8. On consideration of the above position of law, and the rules framed thereunder, the division bench of Kerala High Court in *M.C Sunil* (supra) observed as under :-

“4. ... The permit should specifically contain the States covered by the permit. This is because, authorisation can be issued only in respect of the States covered by the permit. But the permit holder is free to limit the authorisation in respect of any one or a few of the States and he need pay the fee and tax only in respect of that State. However, only on the strength of a national permit a vehicle cannot ply outside the State unless the authorisation is issued in respect of that State. Authorisation fee and the composite fee are paid for using the vehicle in the concerned State. In other words, National Permit alone does not make a vehicle eligible for use in other States. It naturally follows that in respect of the year or the States for which authorisation is not issued by the home State in respect of the vehicle, for the only reason that there was a national permit valid for a period of five years, the State is not entitled to collect authorisation fee and composite fee. ...If the vehicle has been used outside the State without authorisation, it is for that State or the home State to take appropriate action for violating the Act and Rules and not for the home State to collect authorisation fee and composite fee for those States covered by the national permit...”

9. In the case at hand, the vehicle in question is registered by the transport authority of Delhi. Since the accident had occurred within the territory of Delhi, the reference to there being default in taking authorization respecting the use of the vehicle outside the territory of Delhi is incorrect and improper. For being plied within the territory of

Delhi, the vehicle was not required to be covered by any payment of authorization fee.

10. Consequently, the appeal is allowed. The impugned judgment granting recovery rights against the appellants in favour of the insurer is set aside.

11. The statutory amount shall be refunded.

12. The appeal and the pending applications are disposed in above terms.

OCTOBER 09, 2017

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R.K.GAUBA, J.



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