IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2558 of 2012 (O&M)
Date of Decision:- 06.02.2018

Himanshu & Anr. ....Appellants

Versus

Bajaj Allianz General Ins. Co. Ltd. & Anr. ...Respondents

CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL

Present: Mr. Jagdish Manchanda, Advocate, for the appellants.

Mr. Vishal Aggarwal, Advocate, for respondent No.1.

REKHA MITTAL, J. (Oral)

The present appeal is directed against the award dated 17.02.2012 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short,'the Tribunal'), whereby compensation has been awarded on account of injuries sustained by Gourav Saini in a motor vehicular accident because of rash and negligent driving of jeep bearing Registration No. HR-65-4067 (in short,'the offending vehicle') by Himanshu, its driver.

The appeal has been preferred by the driver and registered owner of the offending vehicle, to assail findings of the Tribunal whereby it has been held that the insured is guilty of committing breach of terms and conditions of the insurance policy for want of valid driving licence with the driver and permit with the insured. As a consequence thereof the insurance company has been given right of recovery after payment to the claimant.

Learned counsel for the appellants has submitted that driver of the offending vehicle was holding licence to drive light motor vehicle, therefore, he was competent to drive the vehicle in question as gross vehicle weight is less than 7500 Kg, thus, it falls within the definition of light motor vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (in short, 'the Act'). In support of his contention he has relied upon latest judgment of Hon'ble the Supreme Court ***Mukand Dewangun Vs. Oriental Insurance Co. Ltd., 2017(7) Scale 731***.

With regard to permit, counsel has relied upon judgments of this Court ***The New India Assurance Co. Ltd. Vs. Smt. Bali Devi*** FAO Nos.14-28 of 2006 and 5556-57, 5562-63 and 5570 of 2005 decided on 07.09.2010 ; ***United India Insurance Co. Ltd. Vs. Smt. Sushila Devi & Ors.*** FAO No. 1836 of 2007 decided on 29.07.2010; ***United India Insurance Co. Ltd. Vs. Subhash Chander & Ors.*** FAO No. 3726 of 2006 decided on 18.08.2006; ***United India Insurance Co. Ltd. Vs. Jaswanti Devi*** FAO No. 139 of 2006 decided on 15.09.2010 to contend that no permit was required to ply the vehicle in question.

Counsel representing the insurance company has fairly conceded that in view of latest judgment of Hon'ble the Supreme Court in ***Mukand Dewangun's*** case (supra), controversy with regard to validity of driving licence and competency of Himanshu to drive the vehicle in question no longer survives as the driver possessing light motor vehicle licence is competent to drive the vehicle in question. However, he has supported findings of the Tribunal with regard to the insured being guilty of committing breach of terms and conditions of the insurance policy by plying the vehicle in question without a permit. It is argued that the vehicle in question is a Mahindra Pick Up, insured vide insurance police Ex.R3 as a goods carriage/public carrier. It is further argued that the vehicle had a permit that stood expired on 23.09.2010 but there was no permit to ply the vehicle on the date of occurrence. In addition, it is argued that the judgments relied upon by counsel for the appellants pertain to route permit and not permit, therefore, appellants cannot derive any advantage to their contention from the referred authorities.

I have heard counsel for the parties, perused the paper-book and the records.

The Tribunal gave recovery rights to the Insurance company by holding that the insured has violated terms and conditions of policy on two counts. So far as plea of the insurance company that driver was not competent to drive the vehicle on the basis of licence possessed by him, controversy is squarely covered by judgment of Hon'ble the Supreme Court in ***Mukand Dewangun's*** case (supra) in favour of the appellants and accordingly finding of the Tribunal that driver of the vehicle was not competent to drive the offending vehicle for want of endorsement of transport is liable to be set aside and ordered accordingly.

This bring the Court to the question of non-possessing of permit to ply the vehicle on 16.11.2010. A perusal of the insurance policy makes it evident that the vehicle was insured as goods carriage/public carrier. The registration certificate would reveal that the vehicle is Mahindra Pick-up. The vehicle had a permit that stood expired on

23.09.2010. Under the circumstances, non-possessing of the permit by the insured on the date of occurrence constitutes a defence in favour of the insurer under Section 149(2) of the Act.

The appellants cannot derive any advantage to their contention from the cited judgments that deal with the issue of route permit and not of permit. Non-possessing of route permit or deviation from the route does not constitute a defence in favour of the insurer under Section 149(2) of the Act. As the insured did not possess a permit to ply the offending vehicle on the day of accident, the Tribunal has rightly held the insured being guilty of committing breach of terms and conditions of insurance policy that constitutes a valid defence in favour of the insurer when examined in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Ltd. Vs. Chella Bharathamma and Ors, 2005(1) PLR 102.*** In this view of the matter, findings recorded by the Tribunal that the insured is guilty of violating the terms and conditions of the policy for non-possessing of permit are liable to be affirmed and ordered accordingly.

The Tribunal has given recovery right to the insurer against the insured as well as driver of the offending vehicle. Admittedly, there is no privity of contract between the insurer and driver of the offending vehicle. This apart, possessing a permit to ply goods carriage is the obligation of the insured and not that of the driver. The Tribunal has committed a serious error by giving recovery right against the driver as well, accordingly, findings of the Tribunal giving recovery right against the driver are ordered to be set aside.

For the foregoing reasons, the appeal filed by Himanshu (driver) is allowed. The Insurance company shall not have recovery right against appellant No.1. However, the appeal filed by appellant No.2 is disposed of in the aforesaid terms. Right of recovery given to the insurer against the insured is affirmed for want of permit. No order as to costs.

February 06, 2018 **(REKHA MITTAL)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No