IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3967 of 2012 (O&M)
Date of Decision: 06.07.2018

Bajaj Allianz General Insurance Company Ltd. ....Appellant

Vs.

Smt.Roshni Devi and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Subhash Goyal, Advocate, for the appellant.

Mr.Nonish Kumar, Advocate, for respondents No.1 and 2.

Ms.Bindu Goel, Advocate, for respondent No.4.

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RITU BAHRI, J. (ORAL)

CM No.16752-CII of 2012

For the reasons stated in the application, delay of 182 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellant'), against award dated 19.09.2011, passed by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') vide which compensation to the tune of Rs.2,80,000/- was awarded to the claimants on account of death their son Sandeep Kumar, in a motor vehicular accident.

The Tribunal held that the deceased was bachelor years old and the claimants failed to produce on the record any documentary evidence regarding income of the deceased. It is stated that he was doing tuition and earning Rs.3000/- per month. Learned Tribunal has taken the income of the deceased as Rs.3000/- per month notionally. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-

Insurance Company. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Income	Rs.3000/- p.m.
2.	Future prospect 50%	Rs.3000/- ---- Rs.15,00/- = Rs.1500/-
3.	Total loss of dependency after applying the multiplier by applying the age of the mother of the deceased.	Rs.1500/- X 15 X 12= Rs.2,70,000/-
4.	Transportation and last rites	Rs.10,000/-
	Total	Rs.2,80,000/-

The insurance Company has come up in appeal against the findings on issued No.5 i.e. Whether the vehicle was being driven in violation of terms and conditions of insurance policy, if so, to what effect? OPR3.

To prove this issue the Insurance Company has examined Sachin Ohri, Sr.Executive Legal of Bajal Allianz General Insurance Company Limited as RW7 who deposed that the vehicle was duly insured with respondent No.3 vide insurance policy Ex.R17, according to which under Clause Limitation 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. Since the vehicle was not having any route permit on 16.12.2008 and it was being driven in willful breach/violation of terms and conditions of the insurance policy, the insurance Company was held liable after recording the abovesaid findings insurance Company was held liable to make compensation.

Learned counsel for the appellant/Insurance Company has referred to the judgment passed in the case of **M/s Middle High School and another Vs. Usha and others passed in FAO No.7555 of 2015** where, it has been held that as the school bus (LTV) falls within the definition of Transport Vehicle under Section 2(47) of the Motor Vehicles Act, 1988 which requires a permit for being plied at a public place, in terms of Section 66 of the Act 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 driver of the offending vehicle. An SLP has been filed against the abovesaid judgment but the same was dismissed by Hon'ble Supreme Court.

A perusal of the Award shows that the Insurance Company had examined Naresh Kumar, Assistant of the office of Secretary, RTA, karnal as RW6, who on the basis of register for issuance of permit for school buses commences from Sr.No.1/SBP/2009 dated 01.01.2009 and ends at Sr.No.12/SBP/2009 dated 17.02.2010 brought by him, has deposed that as per entry in said register at Sr.No.25/SBP/09, a permit was issued to bus make Swaraj Mazda No.HR45A-3627 in the name of Vidyawati Institute of Technology, Shambli Road, Nissang (Karnal) on 20.02.2009, valid uptill 22.02.2014 and a sum of Rs.850/- was deposited for the permit vide receipt No.59/920806 dated 23.01.2009 and proved photo copy of extract of relevant entry of the said register as Ex.R16. In cross examination he admitted that before issuing permit, firstly the vehicle is passed by Motor Vehicle Inspector and then registration certificate is issued. He admitted that in this case passing of the vehicle was uptil 21.12.2009 and the registration certificate was issued on 21.01.2009. In the present case, the accident had taken place on 16.12.2008 and at the time of accident, the owner had valid permit vide receipt No.59/920806 dated 23.01.2009 (R-16). The learned Tribunal has further observed that bus had been granted a route permit but 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 the Section 66 of the Motor Vehicles Act, 1988. This aspect has been considered by the judgment of Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Chella Bharathamma 2004(4) RCR(Civil)399** in paragraph 5 as under:

> " Reference was also made to Section 66 of the Act relating to the necessity for permits. The High Court's view that since the vehicle was subject-matter of insurance and the policy was in operation; insurer's liability is really of no consequence. The defence available to the insurer

is when the policy subsists and stress of the High Court on that is really beside the point."

So far as the route permit is concerned, the possession of route permit would not be covered under Section 66 of the Motor Vehicles Act, 1988 and it would not be a ground to defence under Section 149 (2) of the Motor Vehicles Act, 1988. As per judgment **National Insurance Vs. Chella Bharathamma (supra),** defence is available to the Insurance Company under Sections 149(2) and 66 of the Motor Vehicles Act, 1988, if, anyone is violated the conditions of permit and a person plying the vehicle without any route permit. In the present case, route permit was issued on 23.01.2009 and the passing of the vehicle was uptil 21.12.2009 and the registration certificate was issued on 21.01.2009 as per Ex.R-16, the learned Tribunal has rightly held liable to make payment of compensation to the Insurance Company as permit was valid at the time of accident.

So in the light of the discussion, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warrant interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

06.07.2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No