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

**FAO No. 6551 of 2012
DECIDED ON: NOVEMBER 26, 2018**

SHRI RAM GENERAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

ISHWAR SINGH & OTHERS

.....RESPONDENTS

AND

FAO No. 6552 of 2012

SHRI RAM GENERAL INSURANCE COMPANY

.....APPELLANT

VERSUS

PREM SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Goyal, Advocate
for the appellant in FAO Nos. 6551 and 6552 of 2012.

Mr. Upender Prashar, Advocate
for the respondents No.1 to 3 in FAO No. 6551 of 2012.

Mr. Ramesh Sharma, Advocate
for respondent No.1 in FAO No. 6552 of 2012

None for driver and owner.

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AVNEESH JHINGAN J. (ORAL)

This order shall dispose of aforesaid two appeals as common questions of law and facts are involved in both the appeals.

2 The award dated 27.07.2012 passed by Motor Accident Claims Tribunal, Kaithal (for brevity 'the Tribunal') has been assailed by the insurer of the truck bearing registration No. HR-37B-7032 (hereinafter referred to as 'offending vehicle').

3. The facts emanating from the record are that on 26.12.2009, Sudesh Kumar (deceased) alongwith his brother Mukesh Kumar Ranga and his cousin Jasvir was coming back from village Kalayat. Sudesh Kumar was driving his motorcycle. Mukesh Kumar Ranga and Jasvir were travelling on another motor cycle bearing registration No. HR-8E-7964. When they reached near Bus Stand of village Dumara, the offending vehicle which was being driven in a rash and negligent manner came from the opposite side at a very high speed and without blowing any horn struck into the motorcycle of Sudesh Kumar in a rash and negligent manner. It also hit two other persons who were sitting on the side of the road. As a result of the impact Sudesh Kumar lost his life and Prem Singh suffered injuries. FIR was registered at Police Station Kalayat.

4. The legal heirs of Sudesh Kumar and Prem Singh filed two separate claim petitions under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

5. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident occurred due to rash and negligent

driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation to the tune of ₹2,00,000/- alongwith interest @ 9% per annum to the legal heirs of Sudesh Kumar and an amount of ₹ 10,000/- was awarded to Prem Singh alongwith interest @ 9% per anum.

6. First grievance raised by the insurer is that no recovery rights had been awarded as there was no route permit produced by the owner and driver of the offending vehicle for plying the vehicle in State of Haryana. Second grievance raised is that there was a head on collision between the motorcycle and offending vehicle, hence, it was a case of contributory negligence.

7. Learned counsel for the claimants defended the award. It was further argued that it was duly proved that accident took place due to rash and negligent driving of the offending vehicle.

8. The contentions raised by the counsel for insurer deserve rejection.

9. From perusal of the paper book and the record, it is evident that the only defence taken by the insurer of offending vehicle was that there was no route permit. It was not a case where the offending vehicle was not having permit.

10. The Division Bench judgment of this Court in FAO No. 3726 of 2006 ***United India Insurance Company Limited Versus Subhash Chander and others,*** decided on 18.8.2006 has dealt with the issue raised and held as under:

> "We have carefully perused the judgment and we find that, in the said case, there was no permit at all in terms of definition of permit, as contained in Section 2(31) of the Motor Vehicles Act, 1988 (for short `the Act'). The said definition, on reproduction, reads as under:-
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> "2(31) "Permit" means a permit issued by a State or

Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle."

We have also perused Section 149 of the Act which relates to insurer's liability and it is reproduced as under:-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as

if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had noticed through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely.-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in subsection (i) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in subsection (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of subsection (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of subsection (1) of section 147, be of no effect:
Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

> (5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.
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> (6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or has avoided or cancelled the policy.
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> (7) No insurer to whom the notice referred to in subsection (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in subsection (2) or in the corresponding law of the reciprocating country, as the case may be.
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> Explanation.- For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."
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> None of the provisions contained in both the above Sections refers to route permit. Under the circumstances, we are not inclined to accede to the submissions of learned counsel for the appellant, and further, no such plea was ever taken in the written statement before the Tribunal."

11. It was held in the above judgment that provisions of Section 149 of the Act deals with permit and not route permit.

12. The issue stands covered against the appellant by the aforesaid Division Bench judgment of this Court. The same has been followed by a Single Bench decision of this Court in ***Gian Chand Versus Iqbal Hassan (P&H)*** 2014 (3) RCR (Civil) 965.

13. First contention raised by appellant is rejected.

14. The second contention raised by the insurer that the accident occurred due to contributory negligence lacks merit.

15. In the cases under the Act, the onus to prove is not as strict as in the criminal proceedings, the matter can be proved with help of preponderance probabilities. In the present case Mukesh Kumar Ranga who was the eye witness of the accident, had categorically as PW-2 stated before the Tribunal that the deceased was driving his motorcycle on the extreme left side and it was because of rash and negligent driving of offending vehicle that it struck against the motorcycle. Prem Singh (PW-3), who was injured in the accident was waiting for the bus while sitting on the pulia (bridge) also fortified the fact that motorcycle of the deceased was on the left side of the road and the offending vehicle came on wrong side and struck the motorcycle. There was no evidence produced before the Tribunal by the insurer to show that there was contributory negligence of the deceased.

16. Both the appeals are dismissed.

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 26, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No