IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 1205 of 2014(O&M)

Date of Decision: December 03 , 2018.

National Insurance Company Ltd. ...... APPELLANT (s)

Versus

Subash Chander and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Suri, Advocate for the appellant.

Mr. Akshay Sandhir, Advocate for Mr. V.K.Sandhir, Advocate for respondent No.1.

Mr. Kushagra Mahajan, Advocate for respondent No.4.

Mr. Rajneesh Malhotra, Advocate for respondent No.7.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the Insurance company challenging impugned award dated 09.09.2013 passed by the Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as, the 'Tribunal') on the grounds that

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firstly, finding of negligence qua the offending vehicle insured with the appellant-Insurance company does not stand proved. Moreover, the Insurance company is not liable to pay compensation awarded to the claimants in such a situation as the offending vehicle insured with the appellant did not have the necessary permit for plying, which is a fundamental breach of the insurance policy. There is, however, no challenge to the quantum of compensation awarded by the learned Tribunal to the claimants.

Brief facts necessary for the adjudication of the case are that, a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') was filed by the claimant – Subash Chander on account of injuries suffered by him in the motor vehicle accident which took place on 16.01.2011. It is averred in the claim petition that the claimant, aged 50 years was travelling in bus No.PB05-S-9981 on the fateful day, when the offending truck/canter bearing No. HR-37A-5928 driven by respondent No.1 in a rash and negligent manner, came onto the main road from the side of Dhaba in the area of G.T. Road Tangra, P.S. Tarsikka, Amritsar and struck against the bus. As a result thereof, the claimant received multiple injuries. Claimant/injured was taken to Amandeep Hospital, Amritsar for treatment where he remained admitted from 16.01.2011 to 28.01.2011. FIR No.7/2011 under Sections 279/337/338/427 IPC, Police Station Tarsikka was registered against respondent No.1.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of truck/canter bearing registration No. HR-37A-5928 by respondent No.1 – Davinder Singh. Driver of the bus in which the injured was travelling was

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also held guilty of negligence to the extent of 35%.

Learned Tribunal awarded a sum of ₹1,82,100/- on account of medical expenses and ₹7,900/- towards future medical expenses. ₹25,000/- was granted on account of loss of earnings during the period the claimant remained under treatment. A consolidated sum of ₹10,000/- was granted towards special diet, attendant expenses, transportation etc. and ₹5,000/- was granted on account of pain and suffering. Learned Tribunal while awarding a total sum of ₹2,30,000/- as compensation to the claimant vide impugned award dated 09.09.2013, held the present appellant i.e., the Insurer of the offending truck/canter No. HR-37A-5928 liable to pay 65% of the compensation as the offending bus was attributed negligence to the extent of 35%.

Learned counsel for the appellant vehemently argues that there is no question of any negligence on the part of the offending truck/canter, especially to the extent of 65%. The offending bus is contended to be driven at a very high speed in a rash and negligent manner, which was responsible for causing the accident. Moreover, owner of the offending truck/canter (insured with the appellant) tendered a copy of the authorization of the national permit (Mark 'A') in respect to the offending truck/canter but it is proved on record that the said permit was not issued by the Regional Transport Authority (RTA), Ambala. Reference is made to the testimony of RW4 Jai Singh, Senior Clerk, RTA, Ambala (also mentioned as RW4). It is thus prayed that this appeal be allowed.

Learned counsel for respondent-owner of the offending truck while controverting the abovesaid averments, denies that there is any breach of the insurance policy in question. It is vehemently argued that it was incumbent upon

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the insurance company to have proved that there was a breach of conditions of insurance policy inasmuch as there was no valid permit for plying the vehicle in question. Learned counsel for the respondent-owner relies upon the judgments of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Swaran Singh and others, *2004(2) RCR (Civil) 114* and Punam Devi and another v. Divisional Manager, New India Assurance Co. Ltd., *2004(2) RCR (Civil) 236.* It is thus prayed that this appeal be dismissed.

Learned counsel for the Insurance company and the owner of the offending bus No. PB05-S-9981 also refute the said arguments and pray for dismissal of the appeal.

I have learned counsel for the parties and have gone through the file.

It is not in dispute that the bus in question in which the injured was travelling was proceeding on the Highway. The offending truck/canter bearing No.HR-37A-5928 (insured with the appellant) was coming onto the main road from the side. There is absolutely no doubt that the offending truck/truck No.HR-37A-5928 was driven in a rash and negligent manner. It was incumbent upon the driver of the said truck/canter to have exercised due care and caution before entering the Highway from the side road. There is no infirmity or illegality in the finding of the learned Tribunal regarding the apportionment of the negligence to the extent of 65% qua the offending truck/canter.

However, there is merit in the argument of learned counsel for the appellant as far as the question of breach of the insurance policy is concerned. I have perused Mark 'A' as well as statement of RW4 Jai Singh, Senior Clerk, RTA, Ambala. Mark 'A' is the route permit (Authorization for National Permit

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No.419/NP/HR-2004) issued by the RTA, Ambala in respect to the offending vehicle No. HR-37A-5789 in favour of Kawalpreet Kaur wife of Mohanbeer Singh. RW4 Jai Singh, Senior Clerk, RTA, Ambala stated that as per their record, route permit No.419/NP/2004 was issued in favour of Satinder Kaur wife of Sarabjit Singh, resident of HMM Ambala City for vehicle No.HR-37-A-5928 and was valid from 18.03.2004 to 17.03.2005. RW4 Jai Singh, Senior Clerk (also mentioned as RW4) specifically stated that route permit Mark 'A' has not been issued by their office. In the cross-examination the said witnesses stated that he had only brought record pertaining to vehicle No. HR-37A-5928 and not of HR-37A-5789. It is thus clear that the document Mark-A sought to be relied on by the owner is of no avail as it is proved that this permit No.419/NP/2004 was not issued in respect of the offending vehicle No.HR-37A-5789, whereas it is the specific case of the owner that Mark-A was issued in respect to vehicle No. HR-37A-5789.

One of the arguments raised on behalf of the respondent-owner of the offending truck/canter is that the Insurance company never raised any objection regarding the offending vehicle not having a valid permit. The said argument is devoid of any merit. Once the owner of the said vehicle has himself tendered the said route permit and it is proved on record that the said permit was never issued by the RTA, Ambala, Insurance company cannot be held liable in any manner. It has been held in **Pappu and others v. Vinod Kumar Lamba and another,** ***2018(2) RCR (Civil) 42*** that merely producing a valid insurance certificate in respect of the offending vehicle was not enough to make the Insurance Company liable to discharge its liability arising from rash and

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negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle. In the present case, the permit tendered by the owner is proved not to have been issued by the competent authority. Thus, it is held that the Insurance company in this case, is not liable to indemnify the insured. Finding of the learned Tribunal regarding the attribution of negligence to the extent of 65% towards the offending truck/canter is upheld.

As the claim in question, it is informed, has already been satisfied by the Insurance company, it is held that the appellant-Insurance company is entitled to recover the amount from the owner of the offending truck/canter.

Appeal is partly allowed.

(LISA GILL)
JUDGE

December 03 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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