In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2298 of 2014(O&M)
Date of Decision: 16.5.2018

Ram Kishan and another

---Appellants

versus

M/s HDFC Ergo General Insurance Company Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Abhishek Singla, Advocate
for Mr. Keshav Partap Singh, Advocate
for the appellants

Ms. Vandana Malhotra, Advocate,
for the insurance company

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Rekha Mittal, J.

The present appeal directs challenge against the award dated 14.3.2014 passed by the Motor Accidents Claims Tribunal, Faridabad (in short “the Tribunal”) whereby compensation has been awarded on account of death of Deepanshu, daughter of the claimants in a motor vehicular accident that took place on 2.9.2013 at about 8-00 a.m. because of rash and negligent driving of three wheeler HR-99QT- 3890 by Ram Kishan, its driver which stood registered in the name of Parveen Kumar son of Dharamvir.

The present appeal has been preferred by the driver and registered owner of the vehicle to assail findings of the Tribunal on issue No. 3 whereby the insurance company has been given right of recovery against the insured/owner of the vehicle for want of valid permit.

Counsel for the appellants would argue that the vehicle was purchased on 16.8.2013 from A-One Motors, Faridabad (Haryana) as is evident from document Ex. R2. The temporary registration number assigned to the vehicle was valid for a period of 30 days with effect from 16.8.2013, mentioned in document Ex. R1. The vehicle was insured with HDFC Ergo General Insurance Company Limited vide insurance policy Ex. R3 with effect from 20.8.2013. The vehicle was permanently registered from 5.9.2013 valid upto 1.9.2014. Parveen Kamar, owner of the vehicle applied for fitness certificate and issuance of permit. The videography of the vehicle was done on 29.8.2013 and the fitness certificate was issued on 6.9.2013 valid upto 4.9.2018 for a period of five years. It is argued with vehemence that as the accident unfortunately occurred on 2.9.2013 even before the permit could be issued by the office of RTA, Faridaboad, insured cannot be attributed breach of terms and conditions of the policy nor can be fastened with liability to pay to the insurance company in execution of its right of recovery given by the Tribunal. Another submission made by counsel is that at the time of accident, no passenger was carried in the vehicle in question and as such, it was not used as a transport vehicle, therefore, the insured cannot be held guilty of violating the terms and conditions of insurance policy. To bring home his contention, he has referred to the provisions of Section 66 and definitions of 'transport vehicle' in Section 2(47), 'private service vehicle' Section 2(33) and 'public service vehicle' Section 2(35) of the Motor Vehicles Act, 1988 (in short “the Act').

Counsel would argue that no vehicle can be permitted to be brought out of the agency dealing with the sale of vehicles unless it bears temporary registration but there is no such requirement in law that a transport vehicle must have a permit for being carried from the place of purchase to the premises of the registered owner, therefore, in case an accident takes place at that time, the owner cannot be held guilty of violating the terms and conditions of insurance policy.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal that as the offending vehicle was brought in a public place without having any permit, the insured is guilty of violating the terms and conditions of insurance policy that was obtained on 20.8.2013. It is argued that as the vehicle was not insured on the date of purchase or it was being taken to the premises of the registered owner, hypothetical situation posed by counsel for the appellants does not arise in the circumstances of the present case. It is further argued that even if the insured had already applied for grant of permit and the same was in the process of being issued by the concerned authority, insured was not competent to bring the vehicle in a public place and if the same was brought in a public place in violation of the terms and conditions of insurance policy, the insured had incurred the risk of not being entitled to indemnification by the insurance company in case of an accident. It is further argued that as per statement of Satyawan RW2, permit fee was deposited vide receipt No. 181548/78 dated 6.9.2013 and the permit Ex. R5 issued by RTA, Faridabad is valid from 6.9.2013 to 4.9.2018. Satyawan has admitted in his cross examination that prior to issuance of RC which was issued on 5.9.2013, the owner cannot apply for issuance of permit. The insured has not produced on record application filed by him for issuance of permit prior to 2.9.2013, therefore, contention raised by counsel for the appellants that process with regard to issuance of permit had already been initiated prior to the occurrence, is misconceived and liable to be rejected.

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

Indisputably, vehicle was purchased on 16.8.2013 with temporary registration number valid for a period of 30 days with effect from 16.8.2013. The vehicle was got registered by its owner on 5.9.2013. The insurance policy was obtained with effect from 20.8.2013. Contention raised by counsel for the appellants that the insured had applied for grant of permit prior to 2.9.2013 gets falsified and belied in view of the fact that amount of Rs. 520/- towards permit fee was deposited vide receipt dated 6.9.2013 and the permit was issued on the same very day. Satyawan RW2 has clearly deposed in his cross examination that prior to issuance of Registration Certificate, the owner cannot apply for permit. Had the insured applied for permit prior to September 02, 2013, there was no reason for him not to get produced copy of the said application from Satyawan RW2, examined in the case. In this view of the matter, it can be safely held that neither the insured submitted any application for issuance of permit prior to 2.9.2013 nor any process was underway on that day for issuance of permit in favour of the insured. Document Ex. R7 sought to be relied upon by the appellants only shows that the vehicle was videographed on 29.8.2013 and passed upto 1.9.2014 by making endorsement to the following effect:-

> "passed upto 02\9\2013
> To
> 01\9\2014"

Even in the application submitted by the owner on which aforesaid endorsement was made by the Motor Vehicle Inspector, Faridabad, there is no reference to any application filed by the insured for issuance of permit. Taking a cumulative view of materials on record, it becomes clear that neither the insured had filed application for issuance of permit prior to the accident nor the permit was actually issued with effect from 2.9.2013. As the vehicle was being plied at a public place without grant of permit, the insured is guilty of violating the terms and conditions of insurance policy constituting a defence in favour of the insurer.

So far as plea of the appellants that the vehicle was not being used as a transport vehicle as it was not carrying any passengers at the time of occurrence, the said contention is of no avail when the case is examined in view of Section 66(1) of the Act. A relevant extract from sub section (1) of Section 66 of the Act, reads as follows:-

> “No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used ”

The definitions referred to by counsel for the appellants do not lend support to cause of the insured to escape his liability to have the permit of the vehicle in question before it is being used at a public place. In this view of the matter, I do not find any merit in contention of the appellant that either the insured was not guilty of violating the terms and conditions of insurance policy constituting a defence under Section 149 of the Act or the Tribunal has committed an error much less illegality by allowing recovery right in favour of the insurer after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

16.5.2018
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No