

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3814 of 2014 (O&M)

Date of Decision : 30.04.2018

M/s Rao Tourist Services Pvt. Ltd.

....Appellant

Versus

Hafiz Sheikh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Munish Behl, Advocate
for the appellant.

Mr. Rajesh Kumar Sharma, Advocate
for respondent no. 2-Insurance Company.

Surinder Gupta, J.

This is appeal by M/s Rao Tourist Services Pvt. Ltd. challenging award dated 02.11.2013 passed by Motor Accident Claims Tribunal, Faridabad (later referred to as 'the Tribunal') whereby respondent no. 2-Insurance Company was allowed right to recover amount of compensation paid to claimants for death of Jatin (later referred to as 'the deceased') in a motor vehicle accident on 24.09.2010 with bus bearing registration no. UP-16-T-7163 (later referred to as 'the offending vehicle'), from the appellant.

2. As the only issue involved in this appeal is fixation of liability to pay amount of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal awarded right to respondent no. 2-insurer of the offending vehicle to recover amount of compensation from owner of the offending vehicle i.e. appellant as the route permit of the offending vehicle was valid only for Uttar Pradesh and the accident had taken place in the area of Faridabad (Haryana).

4. Learned counsel for the appellant has drawn my attention to observations of a coordinate Bench of this Court in case of **National Insurance Company Ltd. vs. Rajender Giri and others**, 2012 (1) PLR 168, wherein it has been observed in paras 15 and 16 as follows:-

- “15. In ***National Insurance Co. Ltd.'s case (supra)***¹, an auto rickshaw was being plied without a permit. It was held to be a violation of the terms and conditions of the policy on the ground of which defence was available to the insurer under section 149(2) of the Motor Vehicles Act, 1988 (for short 'the Act') to avoid liability of indemnifying the insured. In the case in hand, the vehicle had a route permit which was proved on record as Ex.RX. The said route permit authorized the vehicle to be plied in the State of Rajasthan. However, the vehicle had been brought to the State of Haryana and the accident has occurred there.
16. It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in ***National Insurance Co. Ltd.'s case (supra)*** would not stand attracted to the facts of this case.”

5. In case **United India Insurance Company Ltd. vs. Subhash Chander and others** FAO No. 3726 of 2006 decided on 18.8.2006, an issue

was raised by insurer of the offending vehicle before Hon'ble Division Bench of this Court that the offending vehicle did not have the requisite route permit to ply the vehicle in question. While answering the issue Hon'ble Division Bench after appraisal of provisions of Section 149, Motor Vehicle Act, has observed as follows:-

“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.”

6. Similar observations were also made in cases of **Pawan Kumar vs. Jaswant Singh and others**, FAO No. 5961 of 2012 decided on 10.09.2013; **ICICI Lombard (Motor Insurance) Co. Ltd. vs. Lakhbir Singh and others**, FAO No. 3850 of 2011 decided on 14.03.2013; and **Balwant Singh vs. Pooja Devi (minor)**, FAO No. 4582 of 2011 decided on 20.02.2013 by different coordinate Benches of this Court.

7. Learned counsel for respondent could not cite me any law or citation to the contrary, as such, observations recorded by the Tribunal allowing right to recover amount of compensation from the appellant are set aside being illegal and against settled provisions of law. Consequently, this appeal has merit and is accepted to this extent.

April 30, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No