

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

FAO No.5804 of 2015(O&M)

Date of decision: 25.1.2018

Pardeep Kaur

.....Appellant

VERSUS

Manager Legal HDFC Ergo General Insurance Co. Ltd. Noida and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sherry K. Singla, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 10.04.2015 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (in short 'the Tribunal') whereby compensation has been awarded on account of death of Rajbir Singh in a motor vehicular accident that took place on 14.03.2012 but the insurance company has been allowed recovery right against the insured for want of a route permit to ply the vehicle in question i.e. Truck bearing No.HP-18-4965 in the State of Haryana.

Counsel for the appellant has submitted that the vehicle in question had a permit to be brought on the road but there was no permit to ply it in the State of Haryana. It is argued that non-possession of a route permit to ply in a particular area or deviation from the route does not constitute a defence under Section 149(2) of the Motor Vehicles Act, 1988

(in short ‘the Act’). In support of his contention, he has relied upon judgments of this Court **National Insurance Company Ltd. Vs. Rajender Giri and others, 2012(2) RCR (Civil) 183, M.S. Middle School and another Vs. Usha and others, FAO No.7555 of 2015 decided on 26.09.2017, Madhu Bala and others Vs. Subhash Chand and others, FAO No.2772 of 2012 along with other connected cases, decided on 14.11.2017 and Ashok Kumar and another Vs. Anil Kumar and others, FAO No.4552 of 2016, decided on 14.11.2017.**

Counsel for the insurance company, on the contrary, has supported findings of the Tribunal on the premise that as there was no permit allowed by the State of Haryana to ply the vehicle in question in the said State, insurance company has rightly been given recovery right against the insured.

I have heard counsel for the parties, perused the paper-book and the judgments cited at bar.

The Tribunal in para 23 of the award has held that the goods tax slip or the tax penalty receipt Ex.R4 and Ex.R8 do not prove that these are copies of route permit. The tax receipts are issued by Taxation Department but the route permit is issued by the Transport Department. It cannot be said that if tax has been paid for carriage of goods, liability to hold route permit to ply the vehicle in other state is absolved. Accordingly, it was concluded that truck in question was not having a valid route permit to ply in the State of Haryana and the Insurance Company will be entitled to recover compensation from respondents No.1 and 2.

The Tribunal has failed to appreciate that under Section 66 of the Act, there is requirement to have a permit and not a route permit. The

defences of the insurance company are confined to those, referred to in sub Section (2) of Section 149 of the Act particularly with regard to liability towards third party. When the case is examined in the light of judgments relied upon by counsel for the appellant, it can safely be held that the Tribunal has seriously erred by holding that the insured is guilty of violating the terms and conditions of insurance policy much less constituting a defence under Section 149(2) of the Act. The findings recorded by the Tribunal in this regard are contrary to settled position in law and cannot be affirmed. As the insured is not guilty of violating any of the conditions of contract of insurance that constitutes a valid defence under Section 149(2) of the Act, the insurance company can neither escape its liability to pay compensation to the claimants nor can press for right of recovery against the insured. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation by way of indemnification of the insured in discharge of its obligation under the policy of insurance.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

JANUARY 25, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no