

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

Date of decision: 14.11.2018

1.

FAO No. 963 of 2014(O&M)

M/s Sapna Transporter and Contractor

.....Appellant

VERSUS

National Insurance Co. Ltd. and others

.....Respondents

2.

FAO No. 1009 of 2014(O&M)

M/s Sapna Transporter and Contractor

.....Appellant

VERSUS

National Insurance Co. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ram Bilas Gupta, Advocate for the appellant.

Mr. G.D. Gupta, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

CM No.3185-CII of 2014

Prayer in this application is for condoning delay of 263 days
in filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit of Bhavna Saluja, Proprietor of M/s Sapna Transporter and
Contractor– appellant, the application is allowed. Delay of 263 days in
filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos.963 and 1009 of 2014

This order will dispose of FAO Nos.963 and 1009 of 2014 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.963 of 2014.

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Motor Accidents Claims Tribunal, Palwal (in short 'the Tribunal') whereby the insured has been held guilty of violating the terms and conditions of insurance policy on the basis whereof, the insurance company has been given right of recovery against the insured after payment of compensation to the claimants. It is argued that the vehicle in question is registered in the State of Haryana and occurrence in question also took place within jurisdiction of State of Haryana. Further argued that non-possessing of route permit or fitness certificate is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is further argued that the appellant has filed CM No.3187-CII of 2014 seeking permission to produce on record fitness certificate and another application CM No.6264-CII of 2015 for placing on record permit (Annexure A-2) valid from 01.09.2008 to 31.08.2010, covering the period of accident that took place on 02.12.2009.

Counsel representing the insurance company, on the contrary, has submitted that as the appellant failed to place on record the necessary documents at an appropriate stage before the Tribunal, there is no question of permitting the appellant to place the documents on record by way of additional evidence.

The Tribunal framed issues including issue No.3 to the following effect:-

“3.Whether the insurer has violated the terms and conditions of Insurance Policy? OPR”

Issue No.3 was answered against the insured with the observations, extracted hereinbelow:-

“In the present case offending vehicle is a transport vehicle. The respondents No.1 and 2 have not produced the route permit and fitness certificate of the offending vehicle. The respondent No.3 moved an application for directing the respondent No.2 to produce the route permit and fitness certificate. Vide order dated 4.10.2012, the respondent No.2 was directed to produce route permit and fitness certificate of the offending vehicle. The respondent No.2 failed to produce the route permit and fitness certificate despite availing three opportunities and therefore it was ordered that it would be presumed that the respondent No.2 was not having route permit and fitness certificate. Since the offending vehicle was being plied without route permit and fitness certificate, it is concluded that the respondent no.2 violated the terms and conditions of the Insurance Policy. Therefore, it is held that initially the respondent No.3 would pay the amount of compensation to the petitioners with the liberty to recover the same from respondent No.2.”

Perusal of the written statement filed by the insurance company makes it evident that no such objection was raised that the vehicle was being plied without a permit, route permit or fitness certificate.

The application for production of documents was filed to produce the route permit and fitness certificate. Under Section 149(2) of the Act, non-possession of a route permit or fitness certificate is not a plea in defence available to the insurance company either to escape liability to pay compensation or assert its right to recover the same from the insured after payment of compensation to the claimants. There is nothing on record suggestive of the fact that the insurance company ever raised an issue before the Tribunal that the vehicle was being plied on public road without a permit which in fact is a defence available to the insurer under the Act. In this view of the matter, findings of the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside and the same is decided against the insurance company.

To be fair to the insurance company, counsel has referred to judgment of Hon'ble the Supreme Court **Amrit Paul Singh and another Vs. Tata AIG General Ins. Co. Ltd. and others, 2018 ACJ 1768.** Hon'ble the Supreme Court, in the referred authority, has dealt with adverse affect of non-possession of a permit to ply the vehicle on a public road. It has been held that onus lies on the insured to prove possession of permit and use of transport vehicle in a public place without a permit is a fundamental statutory infraction. As in the case at hand, the insurance company never raised an issue that there was no permit of the vehicle in question in compliance with the provisions of Section 66 of the Act, insurance company cannot derive any advantage to its contention from enunciation in **Amrit Paul Singh and another case** (supra).

No other point has been raised.

In view of what has been discussed hereinbefore, the appeals are partly allowed. As a natural corollary, insurance company shall be

jointly and severally liable to pay compensation without any right of recovery against the insured.

NOVEMBER 14, 2018

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

yes/no

yes/no

(REKHA MITTAL)

JUDGE