

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

FAO No. 9941 of 2014(O&M)

Date of decision: 18.4.2018

Avtar Singh

.....Appellant

VERSUS

Manturi Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Inderjit Sharma, Advocate for the appellant.

Mr. Pardeep Goyal, Advocate for respondent No.9.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 27.10.2014 passed by the Motor Accidents Claims Tribunal, Bathinda (in short 'the Tribunal') whereby compensation has been assessed in respect of death of Aman Pandit @ Sunil Pandit in a motor vehicular accident that took place on 30.10.2012.

The instant appeal has been preferred by Avtar Singh, owner of offending vehicle i.e. Bus No.PB03-W-9396, primarily to assail findings of the Tribunal on issue No.2 whereby the insurance company has been exonerated of liability to pay compensation on the basis that the bus was being driven out of route.

The sole submission made by counsel for the appellant is that the vehicle in question had route permit Ex.RY but the insurance company has been exonerated of liability on the ground that the bus was driven out of authorised route. It is argued with vehemence that non-possession of route permit or deviation from route is not a defence available to the

insurance company under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, insurance company cannot be exonerated of its liability to pay compensation by way of indemnification of the insured under the contract of insurance.

Counsel representing the insurance company would urge that the insured did not produce the permit on record, therefore, insurance company cannot be fastened with liability to pay compensation as non-possession of a permit is a defence available to the insured under Section 149(2) of the Act.

I have heard counsel for the parties, perused the paper-book particularly the award.

The Tribunal in para 3 of the award has noticed certain legal objections raised by the insurance company in its reply. As per facts noticed in para 3 of the award, the insurance company has alleged that the claim petition is not maintainable; the owner of vehicle was not holding valid registration and fitness certificate; vehicle was not plied on the route permit; no intimation regarding alleged accident was given by the insured or claimants to the insurance company; insurance company takes all the pleas available to it under the provisions of Motor Vehicle Act and the driver of vehicle was not holding valid driving licence.

The Tribunal framed issues No.3 and 4 to the following effect:-

“3. Whether the petition is not maintainable? OPR

4. Whether the owner of the vehicle was not having a valid registration and fitness certificate of the vehicle? OPR-3”

There is nothing on record suggestive of the fact that the insurance company ever called upon the insured to produce permit qua the bus in question. Counsel representing the insurance company before the Tribunal raised argument that as per route permit Ex.RY, route of the bus is shown as Bathinda to Mehraj-via- Rampura Phul and from testimonies of Jaswinder Singh RW-1 and Gurdeep Singh RW-2, it is clear that bus was being plied out of route. No contention was raised by counsel for the insurance company that the bus did not possess a permit to ply it on road. Under the circumstances, insurance company cannot be allowed to raise factual controversy with regard to permit in the present appeal. However, non-possession of a route permit or deviation from authorized route does not constitute a valid defence in favour of the insurer under Section 149 (2) of the Act in order to entitle the insurer to escape its liability to pay compensation or press for right of recovery against the insured. In this view of the matter, findings recorded by the Tribunal exonerating the insurance company of liability to pay compensation cannot be allowed to sustain and accordingly set aside. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimants.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. No order as to costs.

Statutory amount of Rs.25,000/- be remitted to the Tribunal for payment to the claimants.

APRIL 18, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no