IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2772 of 2018(O&M)

Date of decision: 21.5.2018

The New India Assurance Co. Ltd. …..Appellant

VERSUS

Shrafat Ali and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Sidhu, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.10349-CII of 2018

Prayer in this application is for condoning delay of 26 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. S.S. Sidhu, Advocate, the application is allowed. Delay of 26 days in re-filing the appeal stands condoned.

Disposed of accordingly.

FAO No.2772 of 2018

The present appeal directs challenge against award dated 28.11.2017 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Shrafat Ali in a motor vehicular accident that took place on 07.06.2016.

Counsel for the Insurance Company would inform that the appeal has been filed qua the limited issue of the offending vehicle being plied without a permit, therefore, the insurance company is entitled to seek exoneration of liability or in the alternative right of recovery against the insured after payment of compensation to the claimants. It is argued that the vehicle in question is truck/container bearing No.PB10-AV-0816 which is a transport vehicle and requires to obtain a permit before being plied at a public place in compliance with the provisions of Section 66 of the Motor Vehicles Act, 1988 (in short 'the Act'). It is further argued that as the insured did not produce permit of the vehicle for necessary verification by the insurance company, it can be inferred that there was no permit of the vehicle in question, thus, the insured is guilty of violating the terms and conditions of the insurance policy that constitutes a defence in favour of the insurer under Section 149(2) of the Act. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd. and others, Civil Appeal No.2253 of 2018 arising out of SLP (Civil) No.7692 of 2017, decided on 17.05.2018.**

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

The Tribunal in para 4 of the award has noticed that the insurance company (respondent No.2 therein) raised certain preliminary objections including that the truck was plied without registration book, route permit and fitness certificate at the time of accident. Counsel for the insurance company has not disputed that the insurance company did not raise a plea that the vehicle was being plied without a permit. He has also conceded that no application was filed by the insurance company calling upon the insured to produce the permit. As the insurance company has not raised a plea that the vehicle was being plied at a public place without a permit, the insurance company cannot be allowed to raise a factual dispute for the first time before the Appellate Court. I would hasten to add that the Tribunal while deciding issues No.3 and 4 relating to non-holding of a valid driving licence and vehicle being plied without valid route permit and fitness certificate has held that respondent failed to produce any evidence in this regard. As has been mentioned hereinbefore but for the sake of repetition, since the insurance company did not raise an issue of permit, it cannot derive any advantage to its contention from the judgment in **Amrit Paul Singh and another's case** (supra) wherein Hon'ble the Supreme Court dealt with the question of permit to be possessed by transport vehicle for plying it in a public place.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

MAY 21, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no