

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

F.A.O No. 3996 of 2015

Date of decision:- 20.12.2019

United India Insurance Co. Ltd.

...Appellant

Versus

Baljinder Singh and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vikas Mohan Gupta, Advocate
for the appellant.

None for respondent Nos. 1 to 3.

Mr. Ajay Pal Singh, Advocate
for Mr. S.S. Tinna, Advocate
for respondent No. 4

Mr. Nonish Kumar, Advocate
for respondent No. 5

RITU BAHRI J.

The present appeal has been preferred by the appellant- Insurance Co. (for short 'the appellant') against the award dated 13.02.2015 passed by the learned Motor Accident Claims Tribunal, Moga (for short, 'the Tribunal') granting compensation to the claimants to the tune of Rs.10,87,000/- on account of death of Dharminder Singh who met with an accident when he was going on his motorcycle bearing No. PB-03-AD-8679 and in the meantime, one bus bearing No. PB-09-G-9855 came in a rash and negligent manner and suddenly applied brakes, as a result of which the motorcycle of Dharminder Singh struck at the back of the bus. He was taken

to Civil Hospital, Moga, but he died on the way.

Learned counsel for the appellant is challenging the award only on the ground that the owner of the offending bus was not having valid route permit, fitness certificate at the time of accident and thus, it is a breach of terms and conditions of the Insurance policy and recovery rights ought to have been granted to the appellant.

Learned counsel has further submitted that the offending bus was being plied illegally by respondent No. 5 and respondent No. 5 had taken the offending bus in question on lease from its owner. Such arrangement was never intimated to the appellant or to the Registering Authority, thus recovery rights should be given to the Insurance Co.

This argument was rejected by the learned Tribunal by relying upon judgment of this Court in a case of ***Pawan Kumar vs. Jaswant Kaur and others, 2014 (1) PLR 392*** and judgment of Hon'ble the Supreme Court in a case of ***Uttar Pradesh State Road Transport Corporation vs. Kulsum and others, 2011 (4) APJ 270*** wherein it has been held that no permission of Insurance Company is required to give the vehicle to Corporation on contract. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner.

After hearing learned counsel for the parties at length, the present appeal is liable to be dismissed as even if the offending vehicle did not have the route permit then it would not amount of violation of Insurance Policy. As per route permit, the vehicle could be plied from Hoshiarpur to Moga.

Reference at this stage can be made to judgment of this Court

in a case of ***Oriental Insurance Co. Ltd. vs. Seeta Devi and others, 2017 (2) PLR 39*** wherein plea was with regard to vehicle being plied outside the permissible area as per route permit. However, it has been held that it does not amounts to breach of insurance policy attracting a valid defence under Section 149 (2) of the Motor Vehicles Act, either to escape liability or seek recovery rights. In para 10, it has been observed as under:-

*“So far as the plea with regard to the vehicle being plied outside the permissible area as per route permit, this Court in **“National Insurance Company Limited vs Rajender Giri and others”, 2012(2) RCR (Civil) 183** has held that if the offending vehicle was plied outside the permissible area as per the route permit, it does not amount to violation of terms and conditions of the policy under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). The same view was reiterated in **Smt. Villa's case (supra)**. Counsel for the appellant has failed to cite any contrary law. In view of the above, I find myself unable to accept the submissions of the insurance company that as the offending vehicle was being plied beyond the permissible area, it amounts to breach of the insurance policy attracting a valid defence under Section 149(2) of the Act either to escape liability or seek recovery rights.*

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company v. Swaran Singh, 2004(2) RCR Civil 114*** wherein the Hon'ble Supreme Court has laid down that breach of condition of a policy

committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid liability. In the summary of defences in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:-

*(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in **sub-section (2)(a)(ii) of section 149**, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

Applying the ratio of the above judgments, the appeal is dismissed as it is not the case where there was no route permit with the owner. The only defence taken by the Insurance Company that the

offending bus was being plied on some other route. However, it does not amounts to breach of insurance policy.

20.12.2019

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No