

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

FAO No.627 of 2014 (O&M)

Date of decision: 10.01.2019

M/s Rajindra Gas and another

... Appellants

Versus

Ramanjit Jaswal and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Parveen Kataria, Advocate for the appellants.
Mr. Suvir Dewan, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.1832-CII of 2014

Heard.

Allowed as prayed for. Delay of 191 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 05.04.2013 passed by the Motor Accidents Claims Tribunal, Patiala to the limited extent whereby insurance company has been given right of recovery against respondents No.1 and 2 before the Tribunal after payment of compensation to the claimant/injured namely Ramanjit Jaswal.

Counsel for the appellants would argue that the Tribunal, in para 24 of the award, has held that the tractor/trolley was to be used for the purpose of agriculture and forestry but the same was being used in violation of the policy, therefore, the insurance company would be entitle to recover compensation from respondents No.1 and 2 after payment to the claimant. It is argued that no issue was framed by the Tribunal that the vehicle in

question was being used in violation of the terms and conditions of policy. The vehicle is registered in the name of M/s Rajindra Gas Service. The insurance company has insured the tractor, trolley and premium of Rs.251/- was charged for E23 items. It is further argued that in the cover note (Annexure A2), there is no such condition or limitation that the vehicle is to be used for the purpose of agriculture/forestry. In addition, it is argued that as the vehicle belongs to M/s Rajindra Gas Service, there was no occasion for the insured to obtain policy in respect of the tractor and trolley for agriculture/forestry purpose.

Another submission made by counsel is that findings of the Tribunal that the vehicle was being plied without a valid permit are liable to be set aside as the insurance company has already verified the permit (Annexure A1) issued by Regional Transport Authority, Patiala and the same was found to be genuine.

Counsel representing the insurance company has conceded to the position that permit produced by the appellants is found to be valid. However, he has supported findings of the Tribunal giving right of recovery in favour of the insurance company.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the Tribunal has not framed an issue, if the vehicle in question was being used in violation of the terms and conditions of policy, therefore, the Tribunal without providing an opportunity to the appellants has gone into the question of violation of the terms of insurance

policy. This apart, the vehicle belongs to M/s Rajindra Gas Service and as per the cover note, a premium of Rs.251/- was paid for E23 items. Both the tractor and trolley were insured in respect of basic third party claim. Nothing has been mentioned in the cover note that the vehicle is to be used for the purpose of agriculture/forestry.

Taking a cumulative view of the aforesaid fact, it is difficult to sustain findings of the Tribunal that the insured is guilty of violating the terms and conditions of policy entitling the insurance company to press for right of recovery against the insured. The Tribunal has also given right of recovery against driver without appreciating that there is no privity of contract between the insurer and driver, therefore, there was no question of any violation of the terms and conditions by the driver.

Counsel for the parties are *ad idem* that permit possessed by the insured has been found to be valid. The non-possessing of fitness certificate is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988. In this view of the matter, right of recovery given in favour of the insurance company cannot be allowed to sustain and accordingly set aside.

No other point has been raised.

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

10.01.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No