IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5146 of 2015 (O&M)
Date of Decision: July 24, 2019

Sanjeev Kumar and another

...... Petitioner(s)

Versus

Oriental Insurance Co. Ltd. and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Aakash Dalal, Advocate for
Mr. S.S. Walia, Advocate
for the applicant-appellants.

Ms. Madhu Sharma, Advocate
for respondent no.1.

Mr. Pankaj Mehta, Advocate
for respondents no.2 to 6.

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LISA GILL, J.(oral)

This appeal has been filed by the the owner and driver of the offending vehicle, challenging the right to recover the awarded compensation, afforded to the insurance company by the learned Motor Accident Claims Tribunal, Hisar vide award dated 18.07.2014.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act) was filed by the claimants-respondents no.2 to 6 seeking compensation on account of death of Shiv Lal. Learned Tribunal concluded that Shiv Lal died due to the injuries sustained by him in the motor vehicle accident, which took place on 19.03.2012, due to the rash and negligent driving of the offending Pick up Dala bearing registration No. HR-57-4718, by its driver Gurpiar Singh-appellant no.2. Compensation to the tune of Rs.9,95,000/- was awarded to the claimants, the details of which are not being detailed as the same are not relevant for the controversy in hand. Learned Tribunal observed that the offending vehicle is a commercial vehicle, therefore, the same could not be run without a valid permit. Thus there being a breach of the terms and conditions of the insurance policy Ex.R-5, the insurance company was afforded the right to recover the awarded amount from the owner/insurer. Aggrieved of this finding, present appeal has been filed by the owner and driver of the offending vehicle.

I have heard learned counsel for the parties and have gone through the file.

Learned counsel for the insurance company is unable to deny that as per Section 66(3)(i) of the Act, there is no necessity of a permit in case weight of the offending vehicle does not exceed 3000 kilogram. In the instant case, the offending vehicle is admittedly a Pick-up vehicle having a gross weight of 1800 kilograms as is specifically mentioned in the insurance policy Ex. R-5.

Section 66(1) reads as under:-

> *"(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State*

Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used: Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage: Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not: Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

And Section 66(3)(i) is reproduced as under:-

(3) The provisions of sub-section (1) shall not apply

(a) to (h) x x x x x x x x x x x x x x x x x x x x x x x x x x

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

In this view of the matter, learned Tribunal has clearly erred in granting the insurance company the right to recover the awarded amount from the owner/insurer. The said finding is set aside. The insurance company is liable to indemnify the insured as no breach of the terms and conditions of the insurance policy is proved on record.

The appeal is accordingly allowed.

July 24, 2019 **(Lisa Gill)**
Sunil **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No