IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4764-2016 (O&M)
Date of decision: 05.09.2019

SURESH KUMAR AND ANOTHER

... Appellants

Versus

RELIANCE GENERAL INSURANCE COMPANY AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vijay Lath, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for the insurance company.

****

REKHA MITTAL, J. (Oral)

CM No.16350-CII of 2016

Heard.

Allowed as prayed for. Annexure A1 is taken on record, subject to just exceptions.

Main Case

Challenge in the present appeal has been directed against award dated 12.05.2016 to the limited extent of allowing recovery right in favour of the insurer in view of findings of the Tribunal on issue No.3.

The Tribunal framed issue No.3, reads thus:-

> Whether respondent No.3 driver of the offending truck was not holding a valid and effective driving licence and other

documents at the time of alleged accident?OPR-4

Counsel for the appellants would argue that permit was issued in respect of truck bearing No.HP-12-A-6221 but the same got expired. Suresh Kumar, owner of the aforesaid truck (appellant No.1 herein) filed an application for renewal of permit and the same was allowed w.e.f. 28.10.2014 to 27.10.2019 vide Annexure A1, sought to be produced by way of additional evidence. It is further argued that as the competent authority in exercise of its power under Section 81 of the Motor Vehicles Act, 1988 (in short 'the Act') has allowed renewal of permit with retrospective effect from the date of its expiry, it is to be construed that the vehicle in question had a valid permit on the date of accident that took place on 03.07.2015.

Another submission made by counsel is that insurance company has raised a contention that since the accident had occurred in the State of Punjab and permit was issued by Government of Himachal Pradesh that would also amount to violation of the terms and conditions of policy. It is argued that such a defence is not available to the insurer under Section 149(2)(c) of the Act. It is vehemently argued that in view of additional evidence produced on record when examined in the light of provisions of Sections 81 and 149(2)(c) of the Act, findings recorded by the Tribunal on issue No.3 cannot sustain and are liable to be set aside.

Counsel representing the insurance company, on the contrary, while refuting contention of the appellants would argue that under Section 66(1) of the Act, 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. He would further argue that since in Section 66(1) of the Act, there is also use of expression 'in that place', the appellants cannot derive any advantage to their contention from the document Annexure A1 as the permit was issued by the Transport Department of Government of Himachal Pradesh but the accident had taken place in the State of Punjab.

I have heard counsel for the parties, perused the paper book and document Annexure A1.

At the outset, it is pertinent to note that counsel for the insurance company has not disputed correctness of Annexure A1. He has also not made any submissions to dispute that the transport authority can renew the permit w.e.f the date of expiry, in view of provisions of Section 81 of the Act. In this view of the matter, it can safely be held that the vehicle in question had a valid permit on the date of occurrence i.e. 03.07.2015.

The insurance company can raise defence available under Section 149(2) of the Act. A relevant provision in respect of permit, reads as follows:-

> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions:-
>
> (i) a condition excluding the use of the vehicle—
>
> (c) for a purpose not allowed by the permit under which the vehicle is used, where the

vehicle is a transport vehicle, or

A plain but careful reading of the aforesaid extract leaves no manner of doubt that a defence under Section 149(2) of the Act is available, if the transport vehicle is used for a purpose not allowed by the permit. The legislature in its wisdom has not created a defence in favour of the insurer if the vehicle is used at a place outside the limit of the State by which the permit has been issued. That being so, contention raised by counsel for the appellants is meritorious and liable to be accepted. In this view of the matter, findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and are accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation to the claimants.

To be fair to the respondent insurance company, counsel has referred to judgment of Hon'ble the Supreme Court **Rani and others Vs. National Insurance Company Ltd. and others, MANU/SC/0794/2018**. With utmost humility and due regard to judgment of Hon'ble the Supreme Court, respondent cannot derive any advantage to its contention from the referred authority because in the said case, provisions of Section 149(2)(a)(i)(c) of the Act have not been considered by the Court.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

05.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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