

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

FAO No.7434 of 2015 (O&M)

Date of decision: 08.02.2019

Amritpal and another

... Appellants

Versus

Meetu Bai and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Lakhwinder S. Sidhu, Advocate
for the appellants.

Ms. Amandeep Kaur, Advocate
for the claimants.

Mr. Punit Jain, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

Amritpal and another, driver and owner of truck No.PB-13-M-1163 (alleged offending vehicle) are in appeal to assail award dated 06.07.2015 primarily on the question of insured being guilty of violating the terms and conditions of contract of insurance, on the basis whereof, the insurance company has been given right of recovery after discharging its liability towards the claimants.

Counsel for the appellants would argue that permit issued by Regional Transport Authority, Patiala dated 07.07.2009 was valid upto 06.07.2014. Prior to expiry of validity period, appellant No.2 deposited fee for renewal of permit on 04.07.2014 vide receipt No.9814126296897

Ex.R2/Annexure A2. It is further argued that Neel Kanth Sharma, Junior Assistant from the office of RTA, Patiala was examined. In his cross examination, he has admitted that the Department does not maintain any record in manual form after computerization since 2010 and fee for permit is deposited online. He has further admitted it correct that renewal fee for permit in respect of offending vehicle PB-13M-1163 was deposited on 04.07.2014 vide receipt Ex.R2. It is argued with vehemence that if the concerned authority did not issue the permit immediately on deposit of renewal fee well before expiry of validity of the earlier permit valid upto 06.07.2014, the appellants cannot be condemned for there being no permit on the day of occurrence i.e. 10.08.2014. It is further argued that fresh permit was issued on 13.10.2014 valid upto 12.10.2019, therefore, the insured cannot be blamed for alleged violation of terms and conditions of policy for non-possessing of permit on the day of occurrence i.e. 10.08.2014. It is argued with vehemence that in view of the materials on record particularly the documents produced in the testimony of Neel Kanth Sharma, finding recorded by the Tribunal that either the insured is guilty of violating the terms and conditions of policy or the insurer is entitle to right of recovery cannot be allowed to sustain.

Counsel representing the insurance company, on the contrary, would urge that perusal of the permit issued w.e.f. 13.10.2014 would reveal that it makes reference to deposit of Rs.2900/- vide receipt No.A-69715 dated 13.10.2014. It is further argued that the registered owner of the

vehicle did not appear in the witness box to explain as to why there are two receipts with regard to deposit of Rs.2900/- as renewal fee i.e. one dated 04.07.2014 relied upon by the appellants and the other that finds reference in the renewed permit Ex.R3. Another submission made by counsel is that assuming that a sum of Rs.2900/- was deposited by Jarnail Singh towards fees of renewal of permit on 04.07.2014, it is not a substitute for permit required for plying a transport vehicle at a public place in compliance with the provisions of the Motor Vehicles Act, 1988 (in short 'the Act'). In support of his contention, he has relied upon judgment of this Court **Ram Kishan and another VS. M/s HDFC Ergo General Insurance Co. Ltd. and others, FAO No.2298 of 2014, decided on 16.05.2018.**

Be that as it may, it is undisputed position of the case that previous permit issued in respect of the offending vehicle got expired on 06.07.2014. The new permit was issued on 13.10.2014 valid upto 12.10.2019. In the interregnum from 07.07.2014 till 12.10.2014, there was no permit authorizing/permitting Jarnail Singh to ply the vehicle at a public place.

Section 66 of the Act deals with necessity for permits. A relevant extract from sub section 1 of Section 66, reads thus:-

“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 ”

Section 149(2) of the Act lays down that no sum shall be payable by an insurer under Sub Section 1 of Section 149 in respect of any judgment or award unless before commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

- (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-
 - (i) a condition excluding the use of the vehicle
 - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
 - (b) for organised racing and speed testing, or
 - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle

There is no dispute that the vehicle in question is a transport vehicle and the same cannot be plied at a public place without having a valid permit. Since in the present case, there was no permit of the vehicle authorizing the same to be used at a public place on the date of accident, the insured is guilty of violating the terms and conditions of insurance policy that constitutes a defence in favour of the insurer under Section 149 (2) of the Act.

This brings the Court to the question, if the insured can have an escape of contravening the terms and conditions of insurance policy by taking shelter of deposit of Rs.2900/- on 04.07.2014 as renewal fee of permit for vehicle No.PB-13M-1163. Counsel for the appellants has failed to point out any rules that envisages that deposit of renewal fee would either automatically operate as issuance of permit or the same is a substitute for a permit to be issued by the competent authority. In this view of the matter, the appellants cannot derive any advantage to their contention from the receipt dated 04.07.2014 in regard to deposit of Rs.2900/- as fee for renewal of permit. However, the said receipt does not find reference in the permit issued by RTA, Patiala valid w.e.f 13.10.2014. On the contrary, the permit issued by the RTA, Patiala actually makes reference to deposit of Rs.2900/-vide receipt No.A-69715 dated 13.10.2014. The registered owner of the vehicle did not appear in the witness box to explain as to why he made another deposit of Rs.2900/- on 13.10.2014 for the purpose of renewal of permit if he had already made such a deposit on 04.07.2014 vide receipt Ex.R2. The controversy raised in the present appeal is squarely covered against the appellants by the judgment of this Court **Ram Kishan and another's case (supra)**. In this view of the matter, there is no reason much less well founded to interfere in findings of the Tribunal that the insured is guilty of violating the terms and conditions of the insurance policy that entitles the insurance company to have right of recovery against the insured after payment of compensation to the claimants. However,

findings of the Tribunal giving right of recovery against the driver cannot be allowed to sustain for want of privity of contract between the driver and insurer.

In view of what has been discussed hereinabove, the appeal is partly allowed. The recovery rights given against driver of the vehicle are set aside. However, the recovery rights given against the insured/owner of the vehicle are affirmed.

08.02.2019
ashok

(REKHA MITTAL)
JUDGE

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