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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 750 of 2016 (O&M)
Date of decision: 14.11.2019

Subhash and another ...Appellants

V/s.

Maya Devi and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ajay Shekhawat, Advocate for the appellants.

Mr. A.S.Sidhu, Advocate for respondent No.7-insurance co.

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<u>RITU BAHRI, J. (Oral).</u>

The present appeal has been filed by the driver and owner i.e. Subhash and M/s. Sarva Hitkari Senior Secondary School against the award of the tribunal dated 18.09.2015 whereby compensation of Rs.7,19,000/- has been awarded to the claimants on account of death of Dilbag Singh who was 55 years of age, in a road accident which took place on 25.04.2014.

Brief facts of the case are that on 25.04.2014 the deceased Dilbag Singh was going to his village Sunderpur from Rohtak on a motorcyle and when he reached near the bus stand of said village, a bus bearing No.HR-63A/9360 (hereinafter referred to as the 'offending vehicle') driven at a very high speed and in a rash and negligent manner by Subhash-respondent No.1 came from back side and hit his motorcyle from behind. As a result thereof, he fell down on the road and received fatal injuries. He was taken to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak by HC Ram Niwas, where he succumbed to his injuries next day. Consequently, the claimants filed a claim petition before the tribunal.

The present appeal has been filed against the findings on issue Nos. 1 and 2 whereby it was held that the bus owned by the appellants was plied outside the route permit limit and the condition of the insurance policy was violated. The appellants have challenged the finding on the issue of route permit. As per the route permit (Ex.R2) of the offending vehicle which was issued by the Regional Transport Authority, Bahadurgarh, District Jhajjar, was valid for the period from 25.01.2010 to 13.01.2015. The said permit was to ply the offending vehicle from the premises of the school to Jahangirpur. The claim of the insurance company was that accident had taken place in District Rohtak which was outside the route permit limit. The insurance company had examined its Legal Manager, Pankaj Bhardwaj as RW1 who in his cross-examination stated that offending vehicle was plied outside the route permit limit. Since the offending vehicle was plied outside the permit limit, there was violation in the terms and conditions of the insurance policy, hence, a direction was given by the tribunal to make payment of the compensation firstly by the insurance company and then to recover the same from respondents No.1 and 2 being driver and owner of the offending vehicle by initiating proceedings before the Executing Court.

Learned counsel for the appellants has referred to a Division Bench Judgment passed by this Court in ***FAO-3726-2006*** titled ***United India Insurance Company Limited V/s. Subhash Chander and others,*** decided on 18.08.2006 on the issue where the owner did not have requisite route permit to ply the bus, was considered by examining the judgment of the Supreme Court passed in ***National Insurance Co. Ltd. V/s. Chella Bharathamma 2005(2)J.C.R.81.*** The Division Bench held that in the case before the Supreme Court, there was no route permit at all as per the definition of permit, containted in Section 2(31) of the Motor Vehicles Act, 1988 and even in Section 149 of the said Act, which deals with the insurer's liability, there is no reference to the word 'route permit' and hence the appeal filed by the insurance company was dismissed.

Thereafter in the case of ***Rajesh Kumar V/s. Santosh and others, FAO-7247-2010*** decided on 09.02.2018, whereby the appeal filed by the owner was allowed on the ground that even if there was no valid route permit, there was no violation of the terms and conditions of the insurance policy and recovery rights could not be given to the insurance policy. This Court in ***FAO-997-2010 titled Oriental Insurance Company Ltd. V/s. Kamlesh Kumari and others, decided on 05.09.2016*** had dismissed the appeal filed by the insurance company. In this case, reference was made to a judgment passed in ***National Insurance Company Ltd. V/s. Rajinder Giri and others 2012(2) RCR (Civil) 183*** where the vehicle had a valid route permit for being plied in State of Rajasthan and the accident had taken place when it was being operated in the State of Haryana. While dismissing the appeal it was held that by plying the vehicle in the State of Haryana would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The same view was followed in the following judgments as well:-

1. ***FAO-688-2013(O&M) Satbir and another V/s. Bimla Devi and others***
2. ***FAO-1808-2010 Anju Bala and others V/s. Mohammad Ahmed and others***

3. ***FAO-4922-2014 Partap Singh V/s. National Insurance Company and others***
4. ***FAO-230-2012 Ashok Kumar Khemaka and another V/s. Oriental Insurance Co. Ltd. and others***

Learned counsel for respondent No.7-insurance company has referred to a judgment passed by this Court in ***FAO-7555-2015 titled M S Middle High School and another V/s. Usha and others***. This judgment would not be of any help to the insurance company as in that case the vehicle of the school was not having route permit at all and hence the insurer cannot be held liable to make payment of the compensation and recovery rights were given to the insurance company. An SLP against the said judgment was also dismissed.

Learned counsel for the insurance company has further referred to a judgment passed by the Supreme Court in the case of ***Amrit Paul Singh and others V/s. TATA AIG General Insurance Co. Ltd. and others 2018 ACC638 (SC)*** where the Supreme Court was examining the case in which the vehicle did not have even termporary permit. Use of vehicle in a public place without a permit is a fundamental statutory infraction and hence in this backdrop, the insurance company has been given recovery rights fron the owner and driver.

In the facts of the present case, the offending vehicle had a route permit to ply the bus from the premises of the school to Jahangirpur but the accident had taken place in District Rohtak. Keeping in view that route permit (Ex.R2) was issued by the Regional Transport Authority, Bahadurgarh, District Jhajjar, there was no violation of terms and conditions of the insurance policy.

The appeal is allowed. Award dated 18.09.2015 is being modified to the extent that the liability to make payment of compensation shall be joint and several of all the respondents.

Pending application also stands disposed of.

(RITU BAHRI)
JUDGE

14.11.2019
Divyanshi

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