

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

226-2

FAO No.4041 of 2018 (O&M)

Date of decision: 24.10.2019

The Shyam Co-operative Society Ltd. and anr. ... Appellants

Versus

National Insurance Co. Ltd. and anr. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for the appellants.
Mr. Om Pal Sharma, Advocate for respondent No.1.
Ms. Neeru Thakur, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

CM No.14166-CII of 2018

Heard.

Allowed as prayed for. Delay of 841 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against award dated 18.12.2015 to the limited extent that insurance company has been given right of recovery against driver and owner of the offending vehicle in view of findings recorded in para 27 of the award.

The Tribunal in para 27 has held, reads thus:-

xx xx no route permit has been produced by respondent No.1. In these circumstances, I am the considered opinion that respondents No.1 and 2 have violated the terms and conditions of insurance policy and therefore, respondent No.3 is not liable to indemnify the insured. In the case law titled **National Insurance Co. Ltd. VS. Chella Bharathamma, 2004(4) RCR (Civil) 399 (SC)**, Hon'ble the Supreme Court has held that:

A person plying the same without permit cannot be placed at a better pedestal vis a vis one who has permit, but has violated any condition thereof insurer cannot be made liable for such vehicle.

Same view has been taken by the Hon'ble Delhi High Court in case law titled **New India Assurance Co. Ltd. Vs. Dharmender Kumar Jain, 2013(3) RCR (Civil) 648 (Delhi).**

In the succeeding para (para No.28), it has been held that respondents No.1 and 2 were not having route permit to drive the offending vehicle at the time of accident and they have violated the terms and conditions of insurance policy.

Perusal of the aforesaid extract makes it apparent that presiding officer of the Tribunal was not even conscious of the fact that it is none of the obligation of the driver to produce route permit nor the driver can be accused of violating the terms and conditions of insurance policy. The Tribunal did not bother to examine that non-possessioning of route permit is not a defence available to the insurer. Rather, the defence available to the insurer is with regard to non-possessioning of a permit. Even the judgment in **Chella Bharathamma's case (supra)** referred to in para 27 deals with question of permit not a route permit. In this view of the matter, findings of the Tribunal that respondents No.1 and 2 therein are guilty of violating the terms and conditions of insurance policy are the result of non-appreciating legal position in the light of Section 149(2) of the Motor Vehicles Act, 1988.

This apart, the appellants filed an application seeking permission to produce additional evidence to place on record permit Annexure A1 and verification certificate Annexure A2. The insurance company was directed to verify the same vide order dated 11.01.2019 but

till date it has failed to comply with the order and as such, an adverse inference is liable to be drawn against the insurance company. Taking a cumulative view of the aforesaid, there is no escape from conclusion that findings of the Tribunal recorded in paras 27 and 28 of the award cannot sustain and are liable to be set aside. As a natural corollary, right of recovery given in favour of the insurer against driver and owner of offending vehicle is liable to be set aside and ordered accordingly. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimant/respondent No.2.

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

24.10.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No