IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8253-2017(O&M)
Date of Order: 30.01.2019

HARDEEP SINGH AND ANR

..Appellants

Versus

UNITED INDIA INSURANCE AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Kotla, Advocate,
for the appellants.

Mr. Gopal Mittal, Advocate,
for the Insurance Company.

ANIL KSHETARPAL, J (Oral)

Owner of the offending vehicle is in the appeal against the rights of recovery given to the Insurance Company.

As per the finding of the learned Motor Accident Claims Tribunal, driver Ram Mehar was holding a valid driving license valid from 06.01.2010 to 31.07.2022 for non transport vehicle and valid from 06.01.2010 to 03.08.2017 for driving transport vehicle. The accident took place on 22.06.2016 when he was driving a truck with 10 tyres (multi axle) having tanker (for transporting liquid) on it. There is no evidence that the truck, having tanker on it, was carrying any hazardous goods. Still further failure to obtain necessary endorsement as required under sub-rule (3) of Rule 9 of the Central Motor Vehicle Rules, 1989 is not so fundamental to hold that it contributed to the cause of accident.

Learned counsel for the appellants has relied upon a judgment passed by a Coordinate Bench in FAO No.1210 of 2014 ***(National***

<u>Insurance Co. Ltd. v. Harbans Kaur and others</u>), decided on 26.03.2018, relevant part of the judgment is extracted as under:-

> "The question that now arises would be whether such a breach of not having obtained necessary endorsement as required under sub-Rule (3) of Rule 9 of the Rules, is so fundamental as to have contributed to the cause of accident. The answer, at the outset, appears to be in the negative. It is nobody's case that the accident took place because of dangerous or hazardous substance being carried in the vehicle. On the contrary, there is no challenge to findings of the Tribunal that the accident occurred due to negligence in driving the offending tanker. In the given scenario, carrying or non-carrying of dangerous or hazardous substance has no nexus with cause of accident that occurred due to rash and negligent driving of the vehicle by its driver. In this view of the matter, it can safely be held that the breach complained of by the insurer is not so fundamental as is found to have contributed to the cause of accident.
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> This apart, perusal of Rule 9 of the Rules would make it evident that before a driver can file an application for obtaining necessary endorsement as required under sub-rule (3) of Rule 9 of the Rules, he is to undergo some training for a period of two to three days but the same does not deal with the professional skill of driving. With regard to professional skill of

> driving, it has already been clarified by the licensing authority at the time of granting licence to the driver authorizing him to drive a transport vehicle. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Apex Court in Swaran Singh's case (supra) coupled with the discussion made hereinbefore, I am inclined to agree with what has been held by the Division Bench of the Madhya Pradesh High Court in Baghelkhand Filling Station and another's case (supra) and Gujarat High Court in Amarshi Punchanbai Patel and others' case (supra). This Court in Rajesh Singh's case (supra) has neither adverted to judgment of Hon'ble the Supreme Court in Swaran Singh's case (supra) nor judgments by the High Courts of Madhya Pradesh and Gujarat. In this view of the matter, insurance company can neither escape its liability to pay compensation nor press for right of recovery merely for want of endorsement required under Rule 9(3) of the Rules on the licence held by driver of the offending vehicle.

Learned counsel for the respondent-Insurance Company has relied upon another judgment of this court in the case of ***Rajesh Singh and another v. Hardeep Singh and another (***FAO No.2178 of 2013, decided on 21.12.2017). The judgment passed in FAO NO.2178 of 2013 has been considered in the judgment passed in FAO No.1210 of 2014, which has been extracted above.

Still further, there is no material on the file to prove that the vehicle was carrying any hazardous goods. In absence thereof, learned Motor Accident Claims Tribunal clearly committed an error while granting recovery rights to the Insurance Company. Learned Motor Accident Claims Tribunal should not have returned a finding without their being any evidence on the file.

For the reasons aforestated, the present appeal is allowed on both the counts:-

(1) That there is no material on the file that the driver was carrying any hazardous goods;

(2) The violation of sub-rule(3) of Rule 9 of the Central Motor Vehicles Act, 1989 is not so fundamental so as to contribute to the cause of accident.

January 30, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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