IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 31.01.2020

FAO No. 5106 of 2015

Furkan and others ....*Appellants*

Versus

Smt. Rajesh alias Kaniya and others ....*Respondents*

FAO No. 5111 of 2015

Furkan and others ....*Appellants*

Versus

Smt. Rajesh Devi and others ....*Respondents*

FAO No. 5112 of 2015

Furkan and others ....*Appellants*

Versus

Smt. Poonam and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. T S Grewal, Advocate
for the appellants

Mr. Salil Sabhlok, Advocate
for respondents No. 1 to 3 (FAO 5106 of 2015)
for respondents No. 1 and 2 (FAO 5111 of 2015)
for respondents No. 1 to 4 (FAO 5112 of 2015)

Mr. Punit Jain, Advocate
for the insurance Company

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Rekha Mittal, J. (Oral)

CM 15790 CII of 2015

Prayer in this application is for condoning delay of 67 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 67 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from FAO No. 5112 of 2015.

Counsel for the appellants namely driver and owner of offending truck bearing No. HR 38D-5123 would fairly inform that appeals have been filed to assail findings of the Tribunal on the issue of route permit on the basis whereof, the insurance company has been given right of recovery against driver and owner of offending vehicle.

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

> 3. w*hether the insured has violated the terms and conditions of the insurance policy as alleged. If so, its effect ? OPR-4*

The Tribunal, in paras 37 and 38 of the award, has noticed that respondent No. 4 therein moved an application seeking directions against respondents No. 1 to 3 therein to produce route permit, registration certificate and fitness certificate of aforesaid truck. Respondents No. 1 to 3 therein were directed to supply copies of documents prayed in application but they produced only copy of registration certificate but did not produce copy of route permit. Further held that in the insurance policy, there is a clear stipulation that 'the policy covers use only under a permit within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under sub-Section 3 of Section 66 of the Motor Vehicles Act, 1988.' Further held that in the wake of such stipulation in the policy, respondents No. 1 to 3 were duty bound to obtain a route permit under Section 66 of the Act but as route permit has not been produced, a presumption can be drawn that route permit under Section 66 of the Act has not been obtained.

The Tribunal, without correctly appreciating the provisions of Section 66 of the Act that it does not talk about route permit but only deals with a permit, to be obtained by particular kinds of vehicle wherein certain exceptions have also been carved out, proceeded to decide the matter. As such, it can safely be held that findings of the Tribunal recorded in para 38 of the award are the result of misinterpretation of the provisions of Section 66 of the Act.

The appellants filed an application for additional evidence seeking permission to place on record a copy of permit issued by the State of Uttra Khand. Counsel for the insurance company is fair enough to concede that on verification, the said permit was found to be valid. Meaning thereby that the vehicle had a permit authorizing it to be brought at a public place, in compliance with the provisions of Section 66 of the Act. Counsel for the insurance company has failed to refer to any provision in the insurance policy that talks about route permit as against permit. Even Section 149(2) of the Act that deals with defences available to the insurer talks about permit and not a route permit. In this view of the matter, findings of the Tribunal that insured is guilty of violating terms and conditions of insurance policy for want of possessing a route permit cannot be allowed to sustain and accordingly set aside.

To be fair to the insurance company, counsel has sought to rely upon judgment of Hon'ble the Supreme Court ***Rani and others vs National Insurance Company Limited and others, 2018 (3) R.C.R. (Civil) 979***. With all humility at my command and due respect to the judgment in *Rani's* case (supra), non-possessing of route permit is not a defence available to the insurance company under Section 149(2) of the Act. This apart, the Tribunal has even given right of recovery against the driver who had no obligation to ensure that there is a permit or route permit of the vehicle nor there is any privity of contract between the insurer and driver.

In view of what has been discussed here-in-above, the appeals are partly allowed. The insurance company shall be jointly and severally liable to pay compensation without any right of recovery. Statutory amount deposited by the appellants be remitted to the Tribunal.

(Rekha Mittal)
Judge

31.01.2020
Mohan Bimbra

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