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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 04.03.2020*

\+ MAC.APP. 907/2018

B N ROADWAYS ..... Appellant

Through: Mr. Navneet Goyal, Advocate.

versus

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD & ORS ..... Respondents

Through: Mr. Pankaj Gupta for Ms.Suman Bagga, Adv for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the Award passed by the learned MACT dated 03.07.2018 in Suit No.3238/2016 to the extent that the insurer of the vehicle has been discharged of indemnifying any liability under the insurance policy. The accident happened outside Delhi. The insurance policy required that the transported vehicle be plied on road in terms of the permit issued by the Regional or State Transport Authority. The permit issued to the appellant was only to the territory of Government of NCT of Delhi. The accident happened in Ghaziabad, U.P. The vehicle had no business being plied in the aforesaid territory without the requisite permission or permit. It is the contention of the appellant that the road tax has been paid for that

date. However, merely paying the road tax for that date does not necessarily mean that the geographical area of the permit stood extended to the State, for which tax was paid. It has been so testified by R1W1 Mr. Surender Kumar Verma, Passenger and Tax Officer of RTO, Ghaziabad, when he was cross-examined by the counsel for the insurance company. He stated that *"it is correct that any vehicle which has a permit of outside U.P. does not make the permit valid for UP by paying the tax as mentioned in Ex. R1W1/1*". The said exhibit is the permit.

2. Insofar as the vehicle was being plied in breach of the policy condition, it was rightly held that insurer would not be liable in indemnifying any loss that may occur in such breach. The impugned order has discussed the issue as under:-

> *"29. The defence of the insurance company is that the offending vehicle bearing No. DL-1LM-6185 was being plied without a avalid permit at the time of accident, which is a violation of policy and therefore, the insurance company is not liable to pay the compensation.*
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> *30. Counsel for insurance company examined witness from Transport Department, Rajpura Road, Under Hill Road, Delhi who stated that permit of the vehicle bearing No. DL-1LM-6185 was issued from their authority for Delhi State only and proved his report as Ex.R3W1/1. Perusal of record shows that the permit of the offending vehicle was issued for Delhi State only whereas the accident had taken place at Tronica City, Ghaziabad, UP. Therefore, the compensation will be payable in the first instance by the insurance company but with liberty*

to recover the same from the driver cum owner of the vehicle in question."

3. A contract of insurance is governed by the strict terms stipulated between the parties. Insofar as there has been an admitted breach of the policy condition, the insurer will not be held liable for indemnifying such loss.

4. This Court in *The New India Assurance Co. Ltd. vs. Nathu Singh & Ors.*, MAC. APP. No. 635/2013, decided on 22.11.2019, has already dealt with this issue as under:

"…….

4. To conclude therefore, that merely because the vehicle in question was ferrying passengers beyond the permitted route, the insurer would be absolved of its liability, is erroneous. The impugned order also refers to the following judgments:

i) Davinder Singh and others Vs. Dukhi Shah and others, Mac. App. 496/2009, decided on 09.07.2012.

ii) Oriental Insurance Company Ltd., Palampur vs Bishan Dass and Ors., FAO No. 21 of 1987

iii) National Insurance Company vs. T. Elumalai and Anr., 1990ACJ426, 1990ANJ 426 (1989) 1MLJ489

iv) Oriental Insurance Company Ltd. vs. Banto Devi and Ors., III (2006) ACC573

v) Tashi Rigzin vs Stanzin Zigmed & Ors., 2010 ACJ 1526

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6. In Shamanna & Anr. Vs. Divisional Manager (2018) 9 SCC 650, it was held that such defence not being available under the statute, the insurer could not insist upon it being absolved of third-party liability. What is to be seen however, whether the owner of the vehicle had breached policy conditions. If yes, then the insurer shall *first pay the third party compensation and have the right to recover the same from the owner.*

7. The learned counsel for the appellant relies upon the dicta of the Supreme Court in Amrit Paul Singh vs. TATA AIG General Insurance Company Ltd. & Ors., (2018) 7 SCC 558, which in similar circumstances, held that where the insured did not have a permit for the vehicle to be plied on a certain route and had not brought anything on the record to prove that he had the requisite permit of the vehicle, the onus would not be imposed upon the insurer. Nevertheless, the insurer was directed to pay the claimants the compensation amount with the stipulation that it shall be entitled to recovery of the same from the owner and the driver of the offending vehicle.

8. In the present case, the owner and the driver were proceeded ex parte. They were given ample opportunity to present their case and to prove that they had a valid permit for operating the bus in Debai area. They chose not to do so. The vehicle was not being operated on the permitted route. The insured was in breach of policy conditions. However, as discussed above, the insurer shall first pay the third-party compensation and will have the right to recover the same from the owner/driver of the offending-insured vehicle.

......"

5. In view of the above, the impugned order calls for no interference. The insurer would first pay the compensation and will have the right to recover the same from the owner/driver of the offending-insured vehicle.

6. There is no merit in the appeal, it is accordingly dismissed.

NAJMI WAZIRI, J

MARCH 04, 2020/A