

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4762 of 2019 (O&M)

Date of decision : November 22nd 2021

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M/s Superfine Knitters Ltd.

.....Appellant

vs.

Maya Devi and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. G.C. Dhuriwala, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate for respondent
No.6- Insurance company

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that, on account of death of one Vijendra Singh, in a motor vehicular accident, which took place on 1.7.2016, at about 8.30 P.M., within the area of Police Station Focal Point, Ludhiana, statedly, on account of rash and negligent driving of truck bearing registration No. HR-55M-1224, owned by M/s Superfine Knitters Ltd., Ludhiana – respondent No.2, driven by Raj Bhandari – respondent No.1, truck being insured with United India Insurance Company Ltd., Patiala – respondent No.3, the

legal representatives of Vijendra Singh, namely, his wife Maya Devi and four minor children, had filed a claim petition under Section 166 of the Motor Vehicles Act, against the driver, owner and Insurance company of the truck in question. That claim petition was contested by the respondents and vide award dated 11.4.2019, the Motor Accident Claims Tribunal, Patiala, accepted the claim petition and awarded a compensation of Rs.17,83,600/- to the claimants with interest and costs, issuing a direction to respondent No.3 Insurance company to satisfy the award at the first instance, though granting it right to recover the amount in question alongwith interest from insured i.e. respondent No.2, for the reason that there was breach of terms and conditions of insurance policy by the insured since the truck in question was not having a route permit to ply in the area where the accident had taken place. The Tribunal has come to the conclusion that the truck in question was being used as a goods carrier without any route permit.

2. Feeling aggrieved by such recovery right granted to the Insurance company, respondent No.2 – owner of the truck has approached this Court by way of filing the present appeal, notice of which was given to the respondent-Insurance company, which had put in appearance through counsel.

3. I have heard learned counsel for the petitioner, learned counsel for the Insurance company, besides going through the record.

4. Learned counsel for the appellant has contended that the Tribunal has wrongly granted recovery rights to the Insurance

company, rather the onus was upon the Insurance company to show that the truck in question was being plied without a valid route permit, but it had failed to lead cogent and convincing evidence in that regard, therefore, the Tribunal fell in error in coming to the conclusion that on account of the truck being plied without a valid route permit, terms and conditions of the Insurance policy were breached, absolving the Insurance company of its liability to pay the compensation to the claimants on behalf of respondent No.2- insured.

5. On the other hand, learned counsel for the Insurance company has contended that the Insurance company had done whatever was possible under the circumstances to show that the truck was being plied without a route permit in as much as, the Insurance company had taken an objection in that regard in the written reply and issue No.3 was also framed to that effect that 'Whether respondent No.1 was not having a valid and effective driving licence, fitness, permit and registration certificate of the vehicle at the time of alleged accident, if so its effect? OPR-3'. Furthermore, the route permit was supposed to be in possession of respondent No.2 and in view of the objection raised by counsel for respondent No.3, the route permit should have been brought on record by respondent No.2 but it was not so done, rather only copy of driving licence of respondent No.1 was placed on record, which was after availing of several opportunities; that counsel for the Insurance company had served notice upon respondent No.2, calling upon him to produce the route permit and other documents, but it was not so done. It was for

that reason that the Tribunal had come to the conclusion that the vehicle was being plied without a valid route permit amounting to breach of terms and conditions of the policy, granting recovery rights to the Insurance company. The discussion with regard to that aspect is contained in para No.15 of the award, which for ready reference is being reproduced as under :--

“15. However, the learned counsel for respondent no.3 has argued that he had served a notice Ex.R5 on the respondent no.2 thereby calling upon him to produce the route permit as well as other documents. However, the respondent no.2 has not produced the route permit pertaining to the vehicle in question. Even RW1 Ajit Lakra stated in his cross examination that he cannot say as to if they were having route permit regarding the truck in question at the relevant time or not. They have not produced the route permit regarding the said truck. In these circumstances, it is made out that the said truck was being used as goods carrier without any route permit. The learned counsel for respondent no.3 has argued that the use of the goods carrier without any route permit amounts to violation of the provisions of Motor Vehicles Act and therefore the Insurance company is not liable. In this regard, he has relied upon the judgment of Hon'ble

Supreme Court in Amrit Paul Singh and others vs. Tata AIG General Insurance Company Ltd., AIR 2018 SC 2662, wherein it has been held as under:-

“23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The Appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be

applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and Ors., cases pertaining to pay and recover principle.” The learned counsel for respondent no.2 could not cite any judgment to the contrary. In view of the law laid down by the Hon'ble Supreme Court in Amrit Paul Singh's case (supra), this Tribunal is of the view that the Insurance company is not liable to pay the amount of compensation as there is breach of condition of the Insurance policy by the insured. However, the Insurer will have to satisfy the award in the first

instance, but thereafter it will have the right to recover the amount of compensation from the insured i.e. respondent no.2. These issues are accordingly decided.”

6. It is to be taken note of that only after owner had placed on record copy of the route permit, only then the Insurance company could have got it examined to see whether it was legal and valid or not. Since respondent no.2 -owner who is appellant before this Court had failed to produce the route permit, despite an application having been filed in that regard by respondent No.3, before the Tribunal, the inference to be drawn is that no such route permit was there. Ajit Lakra, Director of M/s Suprfine Knitters Ltd., Ludhiana, had got his statement recorded before the Tribunal as RW-1, submitting his affidavit Exhibit RW1/A. A perusal of the affidavit goes to show that he had not mentioned even a single word with regard to route permit as to whether he had any legal and valid route permit or not, what to talk of placing on record copy thereof. A perusal of his cross examination on behalf of Insurance company conducted on 18.3.2019, goes to show that when specifically questioned on the point, he had stated that at present he cannot say as to if they were having route permit regarding the said truck at the relevant time or not. He further stated that he had not produced the route permit regarding the truck in question. That clearly goes to show that no such route permit was there.

7. Though during the pendency of the present appeal, an

application has been filed on behalf of appellant under Order 41 Rule 27 CPC, for leading additional evidence, contending that the vehicle in question was purchased by the appellant – company from erstwhile owner, thereafter, the appellant had applied for transfer of vehicle in question and it was accordingly transferred; that thereafter, the appellant had applied for route permit; that the vehicle was not being used for commercial activities and was being moved from one premises to another; that there is nothing to show that the truck was carrying any goods at the relevant time and appellant wants to examine concerned police officials and to place on record documents relating to *Superdari*, as well as record of RTI, Gurugram, in support of his contention and this additional evidence is required for enabling the court for proper adjudication of the matter.

8. The application is being opposed on behalf of the respondent-Insurance company.

9. After hearing the learned counsel for the parties, I find that no ground is made out for allowing the application. The appellant, who was respondent No.2 before the Tribunal, was granted adequate opportunities to lead the evidence and it could have examined any witness found to be necessary and place on record relevant documents. At this stage, the controversy cannot be reopened by allowing the application. Even otherwise, the proposed evidence is not going to help the case of the appellant much with regard to the contention that no route permit with regard to the truck in question was being possessed by the owner of the truck. It needs to

see that the truck is a commercial vehicle and simply because as per version of the appellant it was not carrying any goods at the time of accident, it does not make it a non-commercial vehicle.

10. Furthermore, the truck is as a commercial vehicle, for plying the same some route permit is required and any number of excuses made, cannot make requirement of that document optional. The application in question is without any merit and is dismissed accordingly.

11. Learned counsel for the appellant has referred to various judgments in support of his contentions i.e. National Insurance Company Ltd. vs. Kamlesh Kaur and others 2006 (3) RCR (Civil) 634; Bajaj Allianz General Insurance Company Ltd. vs. Bimla and others 2017 (3) PLR 801; National Insurance Co. Ltd. vs. Raj Rani and others 2009 (1) RCR (Civil) 557; Rajesh Kumar and another vs. Smt. Nirmala and others 2018 (1) PLR 375; Future General Insurance Co. Ltd. vs. Smt. Surjo Devi and others 2013 (1) PLR 246; United India Insurance Co. Ltd. vs. Sharanjit Kaur and others 2005 (1) RCR (Civil) 481; National Insurance Co. Ltd. Chandigarh vs. Kanwaljit Kaur and others 2017 (2) PLR 759; Deputy Commissioner Bilaspur vs. Mahender Kumar and others 2017 (2) ILR (H.P.)605; Thayamma vs. Kumaraa and another 2017 AAC 2103; National Insurance Company Ltd. vs. Smt. Pratima Barick 2017 AAC 959; Oriental Insurance Company Ltd. vs. Kamlesh Kumari and others 2017 (3) RCR (Civil) 1047 and Durugamma Yallamma vs. S.G. Naresh and others 2017 (1) AIR

KAR R 67, but those are not applicable due to different facts and circumstances of the case, as well as the context, in which such observations had been made.

12. On the other hand, learned counsel for the Insurance company has referred to Apex Court judgment titled **Amrit Paul Singh and another vs. TATA AIG General Insurance Co. Ltd., and others 2018 (3) RCR (Civil) 131**, wherein the Apex Court had observed that use of vehicle in public place without permit is fundamental statutory infraction and said situations cannot be equated with absence of licence or fake licence or licence for different kind of vehicle, or for that matter, violation of condition of carrying more number of passengers, the onus to prove cannot be put on insurer and the insurer is entitled to recover the compensation from the owner and the driver. The relevant part of the judgment is para No. 23, which for ready reference is reproduced as under :-

“23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the

Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer.

Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.”

13. I do not see any reason to differ with the Tribunal with regard to the finding that the truck in question was being plied without any valid route permit at the relevant time, resulting in breach of terms and conditions of the insurance policy, entitling the Insurance company to recover the amount of compensation paid by it to claimants, from respondent no.2 – owner of the vehicle, which is appellant before this court. The appellant has not brought on file copy of the route permit even now, which goes to show that the route permit qua the vehicle in question never came in existence.

14. The appeal is without any merit and the same stands dismissed accordingly.

November 22nd 2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes/ No