IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1447/2021(O&M) and
FAO No. 3537/2021 (O&M)

Date of decision: 12.12.2022.

Jora Ram

………………Appellant

Vs.

Sunita Rani and others

…………………Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. GS Punia, Senior Advocate with
Ms. Jagriti Kalia,Advocate and
Mr. SS Swaich, Advocate for the applicant-appellant-owner
Of the offending bus

Mr. Sanjeev Goyal, Advocate for respondent no.1 to 3-claimants

Mr. Saleem Akhtar, Advocate for respondent no.4-Driver

Mr. DR Bansal, Advocate for respondent no.5-Insurance Co.

Nidhi Gupta,J.

CM No.9875-CII/2021.

Aforesaid application has been filed under Section 151 CPC for grant of permission to file the present appeals in the actual name of appellant - Jora Ram, which has been incorrectly mentioned as Jora Singh instead of Jora Ram in the array of parties before the learned Motor Accident

Claims Tribunal, as also in the impugned Award dated 10.4.2018. For the reasons mentioned in the said application, the same is allowed and applicant/appellant is permitted to file these appeals before this Court in the actual name of the applicant/appellant as Jora Ram.

CM 9876-CII/2021

Prayer in the aforesaid application under Section 151 CPC is for condoning the delay of 30 days in re-filing the appeal.

The delay being insignificant, and not seriously opposed by the learned counsel for the respondents, the application is allowed and delay in refiling the appeal is condoned.

CM No. 9877-CII/2021

This application has been moved under Section 5 of the Limitation Act,1963 read with Section 173 of the Motor Vehicles Act for condoning the delay of 531 in filing the appeal.

Learned counsel for the respondent-Insurance Company has filed reply to the above said application seeking condonation of delay in filing the appeal. Reply is taken on record.

Learned counsel for the appellant has placed reliance upon judgment of this Court in **FAO No.6606/2014 titled Mohinder Singh v Lakhwinder Kaur and others**, decided on 22.1.2016 in which case there was delay of 1933 days in filing the appeal. This Court while condoning the delay held that:

> "…….The counsel would desire an adjudication on the application for condonation and would not want to traverse the contentions on merits. If the appeal would require to be

> considered on an issue of merit of whether the insurance company would have a right to recovery or not, I will not take much of the fact that there is a delay in filing the appeal. If there is delay, they are for umpteen reasons which are regular features in the court and I will not hesitate to condone the delay if there is a substantial issue for consideration in appeal and there is gross injustice to the party if the delay is not condoned. I believe that there exists a substantial issue for consideration in appeal of whether the insurance company would be entitled to recover the amount from the insured for alleged breach of terms of policy or not. I, therefore, condone the delay and proceed to take up the case on merits with consent of both the parties….."

Though Ld. Counsel for the respondent Insurance Company has vehemently opposed the condonation of delay in filing the appeal yet, he is unable to controvert the aforestated ruling of the Hon'ble Supreme Court. Ld. Counsel submits that the law of limitation has to be applied with all its rigour. It is further submitted that it is sheer negligence on the part of the appellant that he was proceeded against ex-parte before the Tribunal as he did not appear even after service.

I have heard ld. Counsel for the parties on delay. For the reasons stated in the applications filed on behalf of the appellant seeking condonation of delay in filing and re filing the appeal, and in conformity with the above said ruling, these applications are allowed.

CM 7708-CII/2022

Instant application has been filed under Order 41 Rule 27 CPC to place on record certified copy of stage carriage permit in respect of bus No.RJ-07-PB-1451 as Annexure A-3 by way of additional evidence. Notice of this application was issued to the respondents on 7.7.2022.

However, no reply has been filed thereto by the respondents. Accordingly, CM 7708-CII/2022 is allowed and Annexure A-3 is taken on record.

Main appeals:

This order shall dispose of FAO No.1447/2021 arising from MACT No.42/3.10.2016 and FAO No. 3537/2021 arising from MACT No.41/3.10.2016 decided by Motor Accident Claims Tribunal, Sangrur vide Award dated 10.4.2018, whereby while granting compensation to the claimants therein, recovery rights have been given to the respondent-Insurance Company on the ground that the offending vehicle bearing registration No.RJ-07-PB-1451 did not have valid route permit at the time of accident. Since the facts and law points involved in both these appeals are identical, with the consent of counsel for the parties, these two appeals are being heard and decided together. However, for the sake of convenience, facts are being taken from FAO 1447/2021.

FAO 1447/2021.

This appeal has been preferred by the owner of the offending vehicle challenging the recovery rights afforded to the Insurance Company by the learned Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal') vide Award dated 10.4.2018. The appellant is Jora Ram, owner of the offending bus bearing registration No.RJ-07-PB-1451 (incorrectly arrayed as Jora Singh before the Tribunal), which was held to be involved in the accident which took place on 5.3.2016 due to the rash and negligent driving of respondent No. 4 – driver of the offending vehicle. Claim petitions were filed under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), seeking compensation on account of death/injury of the persons involved in the said accident. Present appeal emanates from MACT Case No. 42 of 3.10.2016 filed by the parents and sister of the deceased Rohit Bansal, aged 18 years.

On issuance of notice to the respondents in the claim petitions, the appellant and respondent-driver submitted their replies by post which were taken on record by the Tribunal, wherein they denied that the accident had taken place. It was further submitted that the liability if any, was that of the respondent insurance company as the offending vehicle held a valid insurance, and the respondent driver was holding a valid driving licence at the relevant time. However, the appellant and the respondent-driver did not appear before the Tribunal, nor did they lead any evidence. Accordingly, they were proceeded against ex-parte.

Respondent Insurance Company filed separate written statement wherein it was inter-alia contended that the appellant had not produced on record Route permit of the offending vehicle at the relevant time.

Learned Tribunal on considering the facts and circumstances of the case concluded that the claimants were entitled to receive compensation on account of death/ injury of the person concerned in each of the claim petitions. Compensation, as detailed in the impugned award, was awarded to all the claimants. Learned Tribunal, however, observed that as the appellant and respondent No. 4 – driver, had not come forward by way of their appearance to discard the claim of the claimants, and had failed to produce on record the valid route permit, as such, the Insurance Company was afforded the right to recover the compensation in question proportionately or jointly, from the present appellant and respondent-driver, after satisfying the claim.

Aggrieved therefrom, present appeals have been filed by the appellant-owner of the offending vehicle.

Learned Sr. Counsel for the appellant-owner has assailed the impugned Award inter alia on the ground that the Tribunal was in patent error in awarding compensation to the claimants as there was overwhelming evidence on the record to prove that the accident had occurred due to rash and negligent driving of Car bearing registration No. HR-26-AZ-0596 by its driver Late Latesh Garg.

It is submitted that nonetheless, one of the issues framed by the learned Tribunal was Issue no.6, which is reproduced hereunder: -

> "6. Whether the respondent no.1 was not having valid RC/Fitness Certificate and route permit of offending vehicle Bus bearing registration No. RJ-07-PB-1451? OPR-3".

It is submitted by the ld. Sr. Counsel for the appellant that the onus to prove issue no.6 was on the Insurance Company, however, no evidence was produced on record by Insurance Company to discharge the onus put upon it to decide the aforesaid issue. It is submitted that in this view the Tribunal was in error in drawing adverse inference against the appellant by holding that the appellant along with driver of the offending vehicle have failed to establish that they were having valid route permit. It is further submitted that in the present case Insurance Policy Ex.R1 is Comprehensive Package Policy covering all liabilities including liability regarding third party and passengers etc. This insurance policy was admittedly valid till 14.2.2017 and it is stated that the Insurance Company has failed to fulfil terms and conditions of the aforesaid insurance policy.

It is submitted by the learned Sr. Counsel for the appellant that the route permit was transferred in the name of present appellant on 18.3.2014. Further, accident had taken place on 5.3.2016, and a perusal of Annexure A-3 clearly shows that the route permit is valid till 15.6.2016.

Learned counsel for the respondent Insurance Company has also vehemently opposed the application seeking to place on record additional evidence by way of Annexure A-3. He submits that additional evidence at this stage cannot be allowed as the appellant had adequate opportunity to place on record the route permit before the Tribunal. In support, counsel relies upon judgment passed of the Hon'ble Supreme Court in the case of **Karnataka Board of Wakf v Government of India and others, Appeal (Civil) 16899 of 1996**, decided on 16.4.2004.

I have heard learned counsel for the parties.

A bare perusal of Annexure A – 3 shows that the route permit was transferred in the name of the appellant on 18.3.2014, and the said route permit is valid till 15.6.2016. Whereas, the accident had taken place on 5.3.2016. It is therefore, clear that at the relevant time the appellant possessed a valid route permit.

Further, even assuming Annexure A-3 is not taken into consideration, para 13 of the impugned Award shows that the learned Tribunal has categorically held that the onus to prove above mentioned Issue no. 6 was upon respondent no.3- Insurance Company. Therefore, the onus of proving breach of the terms and conditions of the insurance policy due to absence of route permit at the time of accident, was on the insurance company. However, to discharge the onus of proof, the Insurance Company merely examined RW1

Vikrant Additional Ahlmad in the Court of ACJM, Gurgaon who merely stated that the police did not attach copy of route permit with the challan. In my considered view, the fact that copy of route permit was not attached with the challan does not by itself prove that the appellant did not have requisite route permit at the time of accident. As such, the Tribunal was in error in drawing adverse inference against the appellant in this regard. As such, non-production of the route permit by the appellant before the Tribunal cannot be held to be a ground for fastening recovery right upon the appellant.

It is also pertinent to note that the appeals filed by the Insurance Company against the same Award have been dismissed by this Court vide common order dated 5.10.2021 passed in FAO No.659/2021 etc., wherein this Court categorically observed as follows:

> "In all these cases, respondent no.1 to 3, while admitting the occurrence of accident due to the rashness and negligence of respondent no.1 did not lead any evidence. The Insurance Company, after taking an objection in the written statement, did not lead any evidence to prove that the bus insured by it did not possess the required permit. The learned counsel representing the appellant failed to draw the attention of the Court to any effort made by the Insurance Company in this regard.
>
> The insurer before insuring the vehicle is required to verify and ensure that the vehicle that is being insured do possess the required permit. It is the Insurance Company which intends to avoid the liability and therefore,

the Insurance Company was required to lead the evidence in this regard".

Ld. Counsel for the respondents are unable to controvert these facts.

In this view of the matter, both the appeals are allowed and the impugned Awards dated 10.4.2018 are set aside insofar as recovery rights have been afforded to the respondent Insurance Company against the appellant-owner of the offending bus.

Disposed of accordingly.

12.12.2022 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**