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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-348-2015

Date of Decision: 23.09.2022

NATIONAL INSURANCE COMPANY LTD

..... Appellant

Versus

MANJINDER SINGH & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sandeep Suri, Advocate for the appellant.

None for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant appeal is seeking recovery rights in award dated 25.08.2014 passed by learned Motor Accident Claims Tribunal (for short 'Tribunal'), SBS Nagar, whereby learned Tribunal has ordered to appellant to pay awarded compensation to claimants but no recovery rights have been extended to appellant-insurer.

2. The facts emerging from record are that on 21.03.2012 Jasmeet Kaur boarded a bus bearing registration No.PB-08-AC-7699. Due to negligence of the driver, Jasmeet Kaur while alighting from the bus fell down and due to multiplier injuries died on the spot. An FIR No.30 dated 21.03.2011 under Sections 279-304-A of IPC was registered at Police Station Rahon.

3. The legal representatives of Jasmeet Kaur filed a petition

under Section 166 of the Motor Vehicles Act, 1988 (for short '1988 Act'), seeking compensation on account of death of Jasmeet Kaur, who was 14 years old at the time of accident. Learned Tribunal after considering entire facts and circumstances concluded that driver of the bus was negligent which caused death of Jasmeet Kaur. Accordingly, learned Tribunal awarded a sum of Rs.3,52,500/- alongwith interest @ 7% per annum to legal representatives of Jasmeet Kaur. Learned Tribunal fastened liability upon appellant-insurer and did not grant recovery rights to insurer.

4. Learned Counsel for the appellant contends that the bus in question was not holding permit as required under Section 66(1) of 1988 Act. A requirement of permit is not a mere formality whereas it is statutory requirement which cannot be ignored. The bus was not holding permit at the time of accident. As per terms and conditions of insurance policy dated 03.08.2011, the insurer is not responsible if bus is used without **permit**. The driver of the bus in his statement dated 30.05.2014 has deposed before learned Tribunal that they were not holding **route permit**. In spite of specific admission on the part of driver of the bus, learned Tribunal has not adverted with this issue and held insurer liable to make payment without extending recovery right from the owner of the vehicle.

5. Vide order dated 10.07.2015, a Coordinate Bench of this Court has ordered to proceed against respondents No.4 and 5 exparte. The respondent No.4 is driver of aforesaid bus and respondent No.5 is owner of the bus. It is apt to notice that there is no grievance of appellant against respondents No.1 to 3.

6. I have perused the record of the case and heard arguments of learned counsel for the appellant.

7. There is no dispute qua accident, negligence of driver of the bus and payment of compensation by insurer to the legal representatives of Jasmeet Kaur, who died in the accident. The dispute lies in the narrow compass i.e. whether appellant has right to recover compensation paid to legal representatives of claimants from owner of the vehicle. The sole contention of learned counsel for the appellant is that bus in question was not holding permit at the time of accident, thus, they are entitled to recover afore-stated amount of compensation from owner of the vehicle. As per Section 66(1) of the 1988 Act, no owner of a motor vehicle can use or permit the use of vehicle as a transport vehicle in any public place without permit granted or countersigned by Regional or State Transport Authorities. Section 66 of the 1988 Act reads as :

“Necessity for permits.—

*(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a **permit** granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used: Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage: Provided further that a stage carriage*

permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not: Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed: 1[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]

(3) The provisions of sub-section (1) shall not apply—

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the

corpses;

(e) *to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;*

(f) *to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;*

(g) *to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf; 2[***]*

(i) *to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;*

(j) *subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;*

(k) *to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle; 3[***]*

(m) *to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;*

(n) *to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;*

(o) *to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession*

of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.”

8. Hon'ble Supreme Court after considering Sections 66, 166 and 149 of the Motor Vehicles Act, 1988 in **“Amrit Paul Singh and another Vs. Tata AIG General Insurance Company Limited and others” 2018 (7) SCC 558,** in para 23 has concluded that insurer is entitled to recover compensation paid to claimants from owner of the vehicle, if vehicle is not having valid **permit**. Para 23 of the judgment reads as :

*“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 license or a*

fake license or a license 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. ”

There is nothing on record to indicate that alleged bus was exempt from getting permit from Regional Licensing Authority, thus, inevitable conclusion is that permit was required, however, as deposed by driver of the vehicle, the bus was not having **route permit** at the time of accident. The appellant in reply dated 30.07.2013 filed before learned Tribunal has raised an objection qua **route permit**.

9. The expression '**permit**' and '**route**' has been specifically defined under Section 2 of 1988 Act. Sections 2 (31) and 2 (38) of 1988 Act read as:

“(31) “permit” means a permit issued by a State or

Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle;

(38) “route” means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;”

10. From the conjoint reading of Section 66, 2 (31) and 2 (38) of 1988 Act, it transpires that no motor vehicle can be used or permitted to be used as transport vehicle in any public place without permit granted by Competent Authority. The expressions '**permit**' and '**route permit**' are not synonymous and interchangeable. Route permit is granted to ply a transport vehicle on a particular route whereas permit is granted to use a motor vehicle as transport vehicle. The driver of the vehicle has deposed that the bus was not holding route permit. Neither there is specific pleading of appellant nor any evidence indicating that the offending vehicle was not having permit. The requirement of Section 66 is '**permit**' and not '**route permit**'.

11. Learned Tribunal was supposed to return findings qua permit. In view of mandate of Section 66(1) of the 1988 Act, read with afore-cited judgment of Hon'ble Supreme Court, this Court has no option except to hold that insurer is entitled to recover amount of compensation from owner of the vehicle, if the vehicle was plied without 'permit' as required under Section 66 of 1988 Act.

There is no representation on behalf of contesting respondents, learned Tribunal has not returned findings qua permit and evidences on record do not give clear picture, thus, it would not be

justified to hold that offending vehicle was not holding **permit** as required under Section 66 of the Act and appellant is entitled to recover awarded amount of compensation from owner of the vehicle. Thus, I deem it appropriate to remand the matter back to learned Tribunal to re-consider the matter after granting opportunity to both sides and thereafter record findings qua permit as required under Section 66 of 1988 Act.

12. The appeal is disposed of in above terms. Registry is directed to return original record to learned Tribunal.

(JAGMOHAN BANSAL)
JUDGE

23.09.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>