

221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6714-2018 (O&M)
DATE OF ORDER: 14.12.2022

Laxmi Chand and anotherAppellants

Vs.

Narayani and othersRespondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Naresh Kaushik, Advocate for the appellants.

Mr. Satpal Dhamija, Advocate for respondent No.3-
Insurance Company.

Nidhi Gupta, J.

CM-23409-CII of 2018

This application has been filed under Order 41 Rule 27 read with Section 151 CPC for placing on record additional evidence by way of Annexure A1 which is the Route Permit dated 15.09.2011 issued by Regional Transport Authority, Solan (HP).

On 01.03.2019, counsel for respondent No.3-Insurance Company had sought time to file reply to the aforesaid application. Till date, reply has not been filed.

In view of the submissions made in the application, the same is allowed and Route Permit (Annexure A1) is taken on record.

Main Case

Present appeal has been filed by the driver (appellant No.1) and owner (appellant No.2) of truck bearing registration No.HP-64-4258 (hereinafter referred to as the "offending vehicle") against Award

dated 05.07.2018 passed in MACP Case No.166 of 2016 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as the "Tribunal") in claim petition filed by respondents No.1 and 2 herein whereby recovery rights had been granted to the respondent-Insurance Company against the appellants.

Briefly stated the facts are that the respondents No.1 and 2 herein had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") for grant of compensation on account of death of their son Gopal due to motor vehicular accident which took place on 04.06.2016 caused due to rash and negligent driving of the offending vehicle/truck bearing registration No.HP-64-4258 by appellant no. 1. Learned Tribunal on considering the facts and circumstances of the case concluded that the claimants were entitled to receive compensation of Rs. 4,80,000/- on account of the death of their son Gopal. Compensation as detailed in the impugned Award, was awarded to all the claimants. Learned Tribunal, however, observed that as appellant No.2 herein did not possess a valid permit on the date of accident i.e.04.06.2016 as such recovery rights were granted to the respondent-Insurance Company against the appellants. It is this Award which has been assailed before this Court by way of the present appeal. It is relevant to note that there is no challenge to the quantum of compensation in this appeal. The appellants have impugned the right afforded to the Insurance Company to recover the compensation amount from them.

Learned counsel for the appellants argues that recovery from the appellants as directed by the learned Tribunal is not warranted as

the findings of the Tribunal in this regard are misconceived and factually incorrect in view of the fact that on the date in question, the appellant possessed a valid Route Permit as evident from Annexure A1.

Para 26 of the impugned Award is reproduced hereinbelow:-

“The accident in the present case took place due to rash and negligent driving of truck bearing registration No.HR-64-4258 which as per Ex.PW2/A was being driven by respondent No.1 Laxmi Chand. As per Ex.R3 the vehicle in question is registered in the name of Girdhari Lal-respondent No.2. There is also on record Ex.R1 driving licence of respondent No.1 Laxmi Chand which was valid up to 25.02.2021. Besides this, RW1 Pawan Kumar Computer Operator RTO Solan when examined deposed and produced certificate Ex.RW1/1 to the effect that no National Permit was issued by RTO Solan. On behalf of respondents No.1 and 2 copy of permit Ex.R5 was produced which is valid for the period from 15.09.2016 to 14.09.2021 and the respondents No.1 and 2 have not been able to show permit which was valid on the date of accident i.e. 04.06.2016. As per Ex.R4 copy of insurance policy on the date of accident the vehicle in question was duly insured but it was driven without any permit and as held in issue No.2 there was violation of the terms and conditions of the insurance policy. Accordingly, this issue is partly decided in favour of respondent No.1 and 2.”

It is submitted that inadvertently, Exhibit R5 which is the Route Permit for the subsequent period which is from 15.09.2016 till 14.09.2021 was placed on record before the Tribunal whereas, as evident from Annexure A1, the validity of the permit shown therein is from 15.09.2011 to 14.09.2016. It is accordingly submitted that it is clear that the appellant held a valid Route Permit on the date in question viz 4.6.2016.

In response, learned counsel for the respondent-Insurance Company submits that the appellants cannot be permitted to lead

additional evidence at this stage and the same ought to have been placed by them before the learned Tribunal at the relevant time. It is further submitted that the Route Permit at Annexure A1 is for State of Himachal Pradesh, whereas, the accident had taken place in Kalka which is situated in the State of Haryana. It is submitted that as such Route Permit (Annexure A1) is not valid.

In rebuttal, learned counsel for the appellants refers to judgments of the Hon'ble Supreme Court i.e **Shinder Kaur Vs. Baldev Singh (Law Finder Doc ID # 942356)** and **Moti Ram Vs. ICICI Lombard (P&H) (Law Finder Doc ID # 631777)** and of this Court i.e. **United India Insurance Co. Ltd. Vs. Subhash Chander and others and Balwant Singh Vs. Pooja Devi (Minor) through her mother**, to submit that as per the ratio of law as laid down in the above said judgments the Route Permit is not a pre-condition, and cannot be termed a violation of the terms and conditions of the Insurance Policy. It is accordingly submitted that recovery rights could not have been afforded to the Insurance Company against the appellants. No further argument has been raised.

I have heard learned counsel for the parties.

I find no merit in the arguments advanced on behalf of the learned counsel for the respondent-Insurance Company. The accident took place in 4.6.2016, and a perusal of Annexure A1 shows that the appellant No. 2 possessed a valid route permit on the date in question as the validity of the Route Permit at Annexure A1, is from 15.09.2011 to 14.09.2016. As such, the sole ground on which recovery rights were granted

to the respondent-Insurance Company against the appellants does not bear scrutiny. Clearly, it is only an inadvertent error on part of the appellants that they produced the Route Permit for the subsequent period I.e. from 15.9.2016 to 14.9.2021, before the Id. Tribunal.

It is also relevant that as per the Insurance Policy issued by the respondent-Insurance Company to the appellant No. 2 in respect of the offending vehicle, only the following Limitations as to use of the insured vehicle were specified therein:

“Limitation as to use

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. The policy does not cover use for:

- a) Organized Racing
- b) Pace Making
- c) Reliability Trials
- d) Speed Testing.”

Learned counsel for the Insurance Company is unable to rebut the above facts, as also the ratio of the above said judgments relied upon by the appellants.

It is therefore, clear that as per the Terms & Conditions of the concerned Insurance Policy, there were only the above limitations stipulated. As such too, there is no violation of the Policy by the appellant.

Accordingly, in view of the above discussion, this appeal is allowed and the impugned Award is set aside to the limited extent

whereby recovery rights have been afforded to the Insurance Company against the appellants in respect of the compensation of Rs. 4,80,000/- awarded to the claimants-respondents.

Appeal is consequently allowed as above. Pending application(s) if any, stand disposed of.

14.12.2022
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No