IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4294-2022(O&M)
Date of Decision: 17.08.2023.

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THE NEW INDIA ASSURANCE COMPANY LTD

.....Appellant

Versus

SHEELA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Varun Katyal, Advocate for the appellant.

GURBIR SINGH, J (ORAL)

1. The Insurance Company has filed the present appeal against the Award dated 08.07.2022 passed by Motor Accident Claims Tribunal, Jind whereby the claimants-respondents have been granted compensation of Rs.26,32,550/- with interest @ 7.5% per annum from the date of filing of the petition till realization.

2. The parties are being addressed as per the original petition.

3. The claimants filed the petition under Section 166 of the Motor Vehicles Act 1988 for grant of compensation on account of death of Krishan caused by respondent No.1 i.e. driver of Truck bearing registration No. GH13AW-1353. The learned Tribunal on the basis of evidence led on the file came to the conclusion that Krishan died due to rash and negligent driving of respondent No.1. He left behind the claimants as his legal heirs. Krishan was working as a Driver of the truck bearing No.HR56-B-1014 and his monthly

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income was assessed as Rs.15,000/- per month. 1/3rd of the amount was deducted as his personal expenses. He was 38 years old. The multiplier of 15 was adopted. A sum of Rs.18,00,000/- as loss of income and sum of Rs.7,20,000/- were granted as future prospectus, Rs.42,550/- as expenses for ambulance, Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs. 40,000/- as consortium. Both the respondents were held liable jointly and severally to pay the compensation.

4. Learned counsel for the appellant-Insurance Company has submitted he is challenging the award only on the ground that offending vehicle had no valid permit and said vehicle was being plied in violation of terms and conditions of Insurance Policy. There was no valid permit issued to ply the truck outside the State of Gujarat. The accident had taken place in District Dhulle, Maharastra which was outside the State of Gujarat. R.D.Bawaliya, Head Clerk, Assistant RTO Officer Surinder Nagar, Gujarat was examined as RW1, who has proved that composition fee for plying the truck outside the State of Gujarat was not deposited, but the learned Tribunal failed to take into consideration said fact. Learned Tribunal also failed to consider that terms and conditions of the insurance policy and statutory provisions were violated. So, the appellant-Insurance Company is not liable to pay the compensation.

5. Reliance has been placed on the judgments passed by Hon'ble Supreme Court in ***Gohar Mohammed Vs. Uttar Pradesh State Road Transport Corporation and others, Law Finder Doc Id # 2091368*** and ***Rani & others Vs. National Insurance Company Ltd and others, Law Finder Doc Id # 1119916;*** judgments passed by this Court in ***Teja Ram and another Vs. United India Insurance Co.Ltd and another, FAO No.3862-2012, decided***

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on 12.05.2016 and ***Amrit Paul Singh and another Vs. Tata AIG general Insurance Company Ltd. and others, FAO-1702-2016 decided on 10.08.2016*** and judgment passed by Hon'ble Madhya Pradesh High Court in ***Smt.Raj Kumari and others Vs. Smt. Anju Sharma and others.***

6. I have heard the submissions of learned counsel for the appellant.

7. It is an admitted case of the parties that national permit was issued to the offending truck, in other words same was valid all over India, and RW1 also stated that national permit of the offending truck was valid w.e.f. 18.12.2017 to 20.08.2018 whereas accident had taken on 19.08.2018, so offending truck was having valid national permit on the date of accident.

8. This Court in case of ***Hans Raj Chaudhary Vs. Nanhi Devi and Ors; 2013 (7) R.C.R (Civil) 2574*** has said that the purpose of the permit is not the same thing as condition in the permit. The legislature has employed a language restricting it only to violation of purpose of permit. The same ratio has also been applied in case of ***ICICI Lombard General Motor Insurance Company Limited Vs. Vijaya Chhabra and others, 2016(3) PLR 399.*** Thus, in the above said authorities, when a vehicle has permit but it has strayed the route, then said defence is not available to the Insurance Company. In case of ***Teja Ram and another (supra)***, the offending vehicle had no route permit. Relying on case of ***National Insurance Co. Ltd Vs. Chella Bharathamma, 2004(4)RCR (Civil) 399***, it is held by the Hon'ble Supreme Court that plying of a vehicle without a permit is an infraction and said defence is available to the insurer. In the said judgment, it has been further held that absence of the permit is valid defence to the insurer. In case of ***Smt. Raj Kumari and others (supra)***, it is held that route permit for one return round per day was issued for the bus. The permit was given for specific route but, in the case in hand, the

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offending truck was having national permit. In case of ***Rani & Ors (supra)***, the offending vehicle was lorry which is meant to carry passengers and not goods.

9. So in the light of above, I am of the view that the offending vehicle was having national permit and was registered in Gujarat. The plying of said vehicle outside the State of Gujarat without payment of composition fee cannot be considered as violation of insurance policy and the insurer is not entitled to take defence that it has no liability. The appeal is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

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renu **Whether speaking/reasoned: Yes/No**
Whether Reportable: Yes/No

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