



FAO-5515-2006 (O&M)

208 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-5515-2006 (O&M)
Date of Decision: -04.03.2025

RAMESHWAR DASS

.....Appellant

Vs.

SURESH KUMAR AND ORS.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rakesh Bakshi, Advocate for the appellant.

Mr. Akhil Saini, Advocate and
Mr. Pradeep Goyal, Advocate for respondent No.2.

SUDEEPTI SHARMA J.

1. The instant appeal has been preferred by Rameshwar Dass owner of the offending vehicle for setting aside the award dated 01.06.2006 passed by the learned Motor Accident Claims Tribunal, Yamunanagar (for short, 'the Tribunal'), whereby, the claimants were awarded compensation and recovery rights were granted to the Insurance Company after indemnifying the claimant.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on the intervening night of July 1 and 2 of 2002 claimant-Suresh Kumar was on his way from village Dhanaura to a place called Kotputli in the State of Rajasthan in a truck bearing No.HR-37-6194 with consignment of mango fruits. Man Singh was driving the said truck in a rash and negligent manner which unfortunately turned turtle and occupants of the truck sustained multiple injuries on their persons.



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SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.

3. Learned counsel for the appellant contends that the learned Tribunal has wrongly held the owner of the offending vehicle liable to pay the compensation. He further contends that despite the fact that the route permit was issued to ply the offending vehicle in the State of Punjab and Haryana and the accident took place in the State of Rajasthan, respondent No.-3 Insurance Company was liable to indemnify the loss caused by the offending vehicle. Therefore, he prays that the present appeal be allowed and the appellant-owner be absolved from the liability imposed upon him.

4. Per contra, learned counsel for the Insurance company submits that the award has rightly been passed. Therefore, he prays for dismissal of the appeal.

5. Before proceeding further, it is necessary to reproduce the relevant portion of the award of the Tribunal:-

“12. Respondent Man Singh (RW2) has testified that he had not gone to the State of Rajasthan with the consignment of mango fruit and the truck had not met with accident. He does not know claimant Suresh Kumar at all. However he admitted that he is employed to drive truck bearing registration No.HR-37-6194. He does not know claimant Suresh Kumar. The truck has the route permit to ply in the States of Punjab and Haryana only.

13. Respondent Rameshwar Dass (RW3) is the registered owner of the truck in question. He has testified that he has the route permit to ply his truck within the States of Punjab and Haryana only. He has admitted that he has often used his truck to transport consignments of mango crop. He does not know if his truck had transported mango crop on 30.6.2002 or that the consignment belonged to petitioner Suresh Kumar amongst others. He also does not know if the vehicle had met with accident and had turned on and the Behrod chowk.

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14. *Shri Ashok Makkar (RW1) is Assistant Administrative Officer, New India assurance Company Limited, Yamunanagar. He has testified that the truck in question bearing registration on HR-37-6194 was duly insured from 18.10.2001 to 17.10.2002 as a goods carrier. The owner of the truck did not file any claim with the Insurance Company towards road side accident damage.*

15. *It has been urged on behalf of the respondents that there is enough evidence on record to believe that the truck in question was not involved in the alleged mishap. It has been further urged that the truck has the route permit to ply within the States of Punjab and Haryana only. It could not be used as a goods carrier to supply the consignment of Mango crop in the State of Rajasthan. Moreover, the owner of the vehicle did not file any insurance claim with the insurer and as such it may be presumed that the vehicle had not suffered any damage on or about July, 2, 2002.*

16. *There is no force in the contentions raised by respondents. The learned counsel for the accident had allegedly taken place at 4.00 a.m. on 2.7.2002 and the first information report was lodged at 6.15 a.m. on that very day meaning thereby that the first version was delivered to the police promptly by complainant Vikas. It is very specifically recorded in the document under reference (Ex. P48) that a consignment of mango fruit was being transported from a place called Bilaspur in district Yamunanagar (Haryana) to a place called Kotputli in the State of bearing registration no. Rajasthan in truck HR-37-6194 with respondent Man Singh on the steering wheel. The driver of the vehicle was maintaining enormous speed. He could not negotiate a few drums placed on road under repair and he lost control of the truck which turned turtle. The accident was allegedly the direct result of rash driving on the part of driver Man Singh. Since the first information report was lodged most promptly, it may be very safely presumed that correct version*

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was rendered by the complainant to the police. The contents of the first information report and the required corroboration to deposition of petitioner Suresh Kumar (PW1). It may also be very safely presumed that insured did not file insurance claim in respect of the damage because he had violated the terms of the insurance policy by plying the vehicle in the State of Rajasthan although the route permit permitted the journey within the States of Punjab and Haryana only. Since the claim could not be cleared, the insured, in his wisdom, did not file the claim. There is no big deal about this issue.

17. Moreover the owner of the truck has not specifically denied the use of his vehicle within the area of the town of Behrod on that morning of July 2, 2002 and the accident resulting into petitioner Suresh.

18. There is overwhelming evidence available on record to prove that the accident was direct result of rash driving on the part of respondent Man Singh who was on the steering wheel of the truck bearing registration no. HR-37-6194 of the meaning of July 2, 2002. The Vehicle had turned turtle in the area of Police Station Behrod (Rajasthan). Issue No.1 is decided in favour of the petitioner accordingly.

ISSUE NO. 2 AND 3

19. The poser for consideration being identical both these issues are taken up together and dealt with.

20. Petitioner Suresh Kumar (PW.1) has testified that he was treated at Civil hospital, Behrod thereafter he was shifted to A.I.I.M.S. Delhi for more specialized treatment. He was treated there as an indoor patient for three days. He was then treated at Dr. S.K. Gupta's hospital for 30 days as an indoor patient. He has spent a sum of Rs. 3,00,000/-on his treatment.

21. Sh. Rajat Garg (PW2) is the proprietor of Suvidha Drugs, S.K. Hospital, Jagadhri has proved bills Ex. P1 to Ex. P30 and Ex. P47.

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22. *Dr. S. K. Gupta (PW3) has testified that petitioner Suresh was admitted in his hospital on 3.7.2002 with injury on the face and head. He had suffered fracture of mandible, alveolar and fracture of maxilla bilateral. He had also suffered the fracture of nasal bone. The depressed fractures were corrected with surgical intervention on 18.7.2002. He was discharged from the hospital on 26.7.2002 after hospitalization of 23 days. The doctor had issued bill Ex. P31.*

23. *Ex. P46 is certificate issued by a board of three doctors which had assessed the permanent disability as 30% after examining petitioner Suresh Kumar on 22.2.2006.*

24. *Ex. P1 to Ex. P42 and Ex. P44 are the medical bills to the tune of Rs. 23,194/- only. Since the injured was shifted from a far off place of Behrod of his native home in district Yamunanagar and he had spent more than three weeks time as an indoor patient, this amount is rounded off to Rs. 30,000/- by allowing the remaining amount towards the amount spent on transport, special diet and attendants. Therefore, the petitioner is awarded the sum of Rs. 30,000/- for the amount spent by him on medicine and special care. He is awarded a sum of Rs. 50,000/- on account of the 30% disability suffered by him in the mishap. The petitioner had suffered multiple fractures and it may be very safely said that he must have taken the period of one year to fully recuperate and report to work. He is thus awarded a sum of Rs. 36,000/- towards the loss of earnings during the period of recuperation of one year by allowing the minimum daily wages of Rs. 100/- only as are available in the State of Haryana. He is awarded a further sum of Rs. 5000/- towards pain and sufferings. The petitioner, is consequently awarded a sum of Rs. 1,21,000/- as compensation on account of the injuries the mishap.*

25. *It has been urged by Sh. Karnesh Sharma, Advocate, learned counsel for the respondent NO. 3 that the insurance company cannot be held liable to indemnify the*

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insured. since he had violated the terms of insurance policy by plying the vehicle in violation of route permit. Statutory defences are available to the insurer as are provided in section 149 (2) of the Motor Vehicle Act as has been observed by the apex Court in National Insurance company Ltd. Vs. Chella Bharathmma 2004(4) RCR (Civil) 399.

26. *It has been testified in so many words respondent Rameshwar Dayal (RW3), the registered owner of the truck in question, that he had the route permit to ply the truck in the States of Punjab occurrence & Haryana only but the mishap had at the State of Thereafter the ratio of National Rajasthan. Insurance Company Vs. Chella Bharathmma's case (supra) shall apply to the facts of the instant case and the insurance company is not liable to indemnity the insured.*

27. *It has been urged by Shri Karnesh Sharma, Advocate, counsel for respondent no. 3 that Sh. Suresh Kumar was a gratuitous passenger traveling in a goods vehicle and the insurance company is not liable to pay compensation to him. He has relied upon National Insurance Co. Ltd. Vs. Bommithi Subbhayamma & Ors. (2005-3) Punjab Law Reporter 546 and National Insurance Co. Ltd. Vs. Gulab Singh & Others 2005 ACJ 241 to strike home his view point. However, the ratio of the reported case law shall not apply to the facts of the instant case because petitioner Suresh Kumar was traveling consignment of mango fruit. with his own He had paid to transport the consignment from district Yamunanagar to a place called in the State of Rajasthan and he cannot gratuitous passenger.*

28. *Issue No. 2 is, consequently, decided in favour of the petitioner, who is entitled to receive Rs. 1,21,000/-held as compensation from respondents No. 1 and 2. Since the vehicle was fully insured on the day of the mishap, the New India insurance Company respondent. No. 3 shall pay the compensation amount to petitioner Suresh Kumar but THE insurance company shall have the right to recover this amount*

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from respondent No. 2 Rameshwar Dass, the registered owner of the truck in question, under the terms of this very award. (Issue No. 3 is decided in favour of respondent No. 3 since the insured had violated the terms and conditions of the insurance policy by plying the truck in such area for which the route permit had not been obtained by the registered owner. The insurer is not liable to indemnify the insured .”

6. The pivotal issue for consideration before this Court is to determine who shall be liable to compensate the claimants when the offending vehicle did not possess the requisite route permit to ply on the route in question.

7. This issue is no longer res integra, as it has already been settled by a Division Bench of this Court in case in **FAO No. 3726-2006** titled as **UNITED INDIA INSURANCE CO. LTD. V/S SUBHASH CHANDER AND ORS.** The Division Bench held that even in cases where the offending vehicle lacks the requisite permit to operate on a particular route, the Insurance Company remains liable to indemnify the loss caused by the vehicle. The relevant portion of the judgment is reproduced as under:

“In this insurer's appeal, learned counsel submitted that the offending vehicle being a truck (RJ-07-G-2333) did not have the requisite route permit to ply the vehicle on the route in question. Learned counsel placed heavy reliance on a judgment of Hon'ble the Apex Court reported in 2004 ACJ 2094 (National Insurance Company Limited versus Challa Bharathamma and others).

We have carefully perused the judgment and we find that, in the said case, there was no permit at all in terms of definition of permit, as contained in Section 2(31) of the Motor Vehicles Act, 1988 (for short the Act'). The said definition, on reproduction, reads as under:-

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"2(31) "Permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle."

We have also perused Section 149 of the Act which relates to insurer's liability and it is reproduced as under-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had noticed through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal, and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely -



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(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

- (1) a condition excluding the use of the vehicle-*
 - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
 - (b) for organised racing and speed testing, or*
 - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
 - (d) without side-car being attached where the vehicle is a motor cycle; or*
- (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*
- (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.*

(3) Where any such judgment as is referred to in sub-section (i) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer

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had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or has avoided or cancelled the policy (7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit

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of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation. For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."

None of the provisions contained in both the above Sections refers to route permit. Under the circumstances, we are not inclined to accede to the submissions of learned counsel for the appellant, and further, no such plea was ever taken in the written statement before the Tribunal.

Accordingly, the FAO, being devoid of merits, is, hereby, dismissed."

8. Moreover, the legal position was reiterated by Co-ordinate Bench of this Court in case titled as ***National Insurance Company Limited vs. Rajender Giri & Ors., 2012 (2) RCR (Civil) 133***, where the offending vehicle had been granted a permit for operation within the State of Rajasthan, but the accident occurred in the State of Haryana. The Court held Insurance Company liable to pay the compensation awarded by learned Tribunal.

9. Further a perusal of the record reveals that the driver of the offending vehicle was having a valid and effective licence at the time of accident. Moreover the offending vehicle was fully insured on the day of the accident by the New India Insurance Company.

10. In sequel of the settled legal position, this Court is of the unequivocal opinion that the learned Tribunal fell into error by fastening the liability upon the owner of the offending vehicle. The liability to indemnify the claimants squarely rests with the Insurance Company.

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11. In light of the foregoing, the present appeal is **allowed**, and the impugned award is modified to the extent that the recovery rights granted to the Insurance Company to recover the compensation from appellant-registered owner of the offending vehicle is hereby set aside.

12. The statutory amount of Rs.25,000/- deposited by the appellant as required under Section 173(2) of the Motor Vehicles Act, 1988 be refunded to him as per rules.

13. Further Insurance Company is directed to disburse the current schedule fees to Mr. Pradeep Goyal, Advocate, within a period of twenty days from the date of receipt of certified copy of this order, in view of order dated 18.07.2024 passed by this Court in FAO-1682-2007.

14. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

04.03.2025

mahima

Whether speaking/non-speaking : Speaking
Whether reportable : Yes