

(2014) 05 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1535 of 2013 (O&M) in M.A.C.T.
Case No. 78 of 2009

Bhagwi Golden Transport Company

APPELLANT

Vs

Urmila Devi and Others

RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 2(31)

Citation : (2015) 4 ACC 178 : (2015) ACJ 1791 : (2014) 176 PLR 186

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Rahul Deswal, Advocates for the Appellant; Vikramjit Singh,
Advocates for the Respondent

Judgement

Jitendra Chauhan, J.

C.M. No. 8402-CII of 2013

Heard.

Keeping in view the circumstances explained in the application, there are sufficient grounds to condone the delay. Delay of 639 days in filing the appeal is condoned.

CM allowed.

Main Appeal

1. The instant appeal has been preferred by the appellants-Owner, challenging the impugned Award dated 25.03.2011, passed by the learned Motor Accident Claims Tribunal, Bhiwani, (for short, "the Tribunal"). The learned counsel for the appellant-owner contends that the appellant possess valid route permit to ply the vehicle, which was taken into possession by the police in case FIR No. 220 dated

01.10.2009, P.S. Manesar, and while submitting report under Section 173 of the Code of Criminal Procedure, the Police attached the permit with judicial file. The learned counsel further contend that as the claim proceedings were not in the knowledge of the owner and the driver so they could not produce the route permit. The learned counsel further contends that an application under Order 41 Rule 27 of the Code of Civil Procedure has been filed along with this appeal and a permission has been sought to bring on record the photocopy of national route permit issued by the Secretary, Regional Transport Authority, Gurgaon. The learned counsel further contend that the accident took place on 01.10.2009 while the permit was valid from 21.02.2009 to 20.02.2010.

2. On the other hand, the learned counsel for the Insurance Company submits that it is a case of breach of the insurance policy. The photostat copy of permit placed on record as annexure A-1, if taken to be true, it is apparent that the authorization is valid in the states of Delhi, U.P., Rajasthan and M.P. In this case, the accident occurred within the State of Haryana, in which the owner did not take authorization to ply the vehicle.

3. I have heard learned counsel for the parties and perused the case file.

4. Permit is defined as per section 2(31) of the Motor Vehicles Act as under:--

"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."

5. Admittedly, the present appellant i.e. the owner and the driver of the vehicle did not chose to appear in the claim petition before the Tribunal and remained ex parte. The Insurance Company brought on record copy of the Insurance Policy as Ex. R-1. There is no dispute that the offending vehicle was insured at the time of the accident with the Insurance Company. The valid driving licence of the driver, permit and registration certificate of the offending vehicle was not brought on record by either of the parties. Even if the permit placed on record is taken to be true even then the valid and effective driving licence of driver Parmod Ram has been withheld by the owner in this appeal. It is not proved on record either in the claim petition or in this appeal that driver Parmod Ram was competent to drive the container i.e. the offending vehicle. So, the adverse inference has to be drawn against the owner and the driver.

6. The learned counsel for the insurance company relies upon J.B. Pipes Vs. Madan Lal and Others, wherein it was held that when the route permit of the vehicle did not cover the part of the State but entered and caused accident, the Insurance Company cannot be directed to pay the compensation. In this case also the offending container entered the State of Haryana without any valid authorization. The learned Tribunal has rightly held that the Insurance Company is not liable to pay the compensation and that the owner and the driver are liable to pay the amount of compensation jointly and severally. In view of the above discussion, the present appeal is hereby dismissed. The application under Order

41, Rule 27 of the Code of Civil Procedure cannot be allowed at this stage and is also dismissed.