

(2012) 05 DEL CK 0514
In the Delhi High Court
Case No : Mac. App. 385 of 2011

ICICI Lombard General Insurance Co Ltd.	APPELLANT
Vs	
Bijender Singh and Others	RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149(2), 149(2)(a), 149(2)(a)(i), 149(2)(a)(i)(c)

Citation : (2012) 130 DRJ 545

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Joy Basu with Ms. Ruchi Bharda Jain, for the Appellant; Deepak Tyagi, Advocate for R-1 and R-2 and Mr. Manish Mannie, Advocate for R-3 to R-5, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Mittal, J.—The Appellant ICICI Lombard General Insurance Company Limited impugns a judgment dated 09.12.2010 whereby a compensation of Rs. 15,22,944/- was awarded for the death of Bhishm Tanwar, who died in a motor accident which occurred on 01.08.2008. The sole ground of challenge raised during the hearing of the Appeal is that the offending vehicle No. UP-17C-5880 was attached by the second Respondent with U.P. State Road Transport Corporation (UPSRTC). The State Carriage Permit possessed by the Second Respondent got converted into a Contract Carriage. No permission was obtained by the Second Respondent from the concerned Transport Authority for transfer of the permit in favour of UPSRTC. This being in violation of the condition of permit, the Appellant Insurance Company was not obliged to indemnify the insured.

2. The Motor Accident Claims Tribunal (the Claims Tribunal), argues the learned counsel for the Appellant, erred in fastening the liability on the Appellant Insurance Company.

3. In my view, the contention raised is misconceived.

4. It may be noticed that when a certificate of Insurance has been issued by the Insurance Company it entitles the insurer to defend the liability of the Insurance Company only on the grounds as mentioned in Section 149 (2) (a) of the Motor Vehicles Act, 1988 (the Act). To appreciate the contention raised, it would be appropriate to extract Section 149 (2) of the Act hereunder:-

"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 notice 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:-

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

(i) 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 organized 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

(a) 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."

5. It is not the Appellant's case that there was violation of Clause (a) (b) (d) of Section 149 (2)(a)(i) or of Clause (ii) (iii) of Section 149 (2) (a) of the Act.

6. To take shelter of Clause (c) of Section 149 (2) (a) (ii), the Appellant Insurance Company must prove that the vehicle was being used for a purpose not allowed by the permit where the vehicle was a transport vehicle.

7. I had the occasion to deal with the conditions for grant of permit for a TSR plying in NCT of Delhi issued by the Transport Authority in Mahender Singh v. Oriental Insurance Co. Ltd. & Ors. MAC APP.430/2010, decided on 10.05.2012 and extracted 22 conditions which are normally attached to the grant of permit. The conditions for grant of permit include; keeping the vehicle neat and clean; displaying particulars of identity of the driver; and wearing uniform in gray colour by the driver. In paras 6 and 7 of Mahender Singh (supra), this Court observed as under:-

"6. Thus, a perusal of the condition for issuance of permit, inter alia, are that the vehicle shall be kept neat and clean at the time of operation (condition No. 16); that the vehicle must be equipped with the First Aid Box; that the driver must display the particulars of his identity and photograph at a prominent place inside the windscreen (Condition No. 19); that the driver must be of good character and without any criminal record; the driver shall wear uniform in gray colour with his/her smart card based Public Service Vehicle (PSV) badge prominently displaying on the uniform (Condition No. 8).

7. Can it be said that the Insurance Company would be able to avoid liability if the vehicle is not kept clean or the driver is not wearing the uniform? It is not each and every condition of permit contravention of which would allow the Insurance Company to avoid the liability. On the other hand, a close reading of the Clause (c) to Section 149 (2) (i) (a) would show that it is only the user of the transport vehicle for the purpose not allowed by the permit would enable the Insurance Company to defend the action to satisfy an award in a motor accident where the risk is covered by a policy obtained u/s 147 of the Act."

8. This Court relied on the judgment of the Supreme Court in State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, regarding interpretation of the words "for a purpose not allowed by the permit" and held that the TSR not been driven by the permit holder would not be a breach of the condition envisaged u/s 149 (2) (a) (i) (c) of the Act. Paras 8,9 and 10 of Mahender Singh (supra) are extracted hereunder:-

"8. The interpretation of contravention of condition of permit envisaged u/s 66 of

the Act and the contravention of condition of permit with respect to the purpose for which the vehicle may be used came up for consideration before the Supreme Court in *State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh*, albeit in a different context. In the said case, the police had seized certain vehicles for carrying passengers in excess of the numbers permitted by the condition of permit issued by the Transport Authority. The action was challenged by the Association of Transporters by virtue of a writ petition before the Aurangabad Bench of Bombay High Court. The High Court analyzed the different provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and on consideration of the same came to the conclusion that it is not each and every violation of the condition of the permit which would authorize the seizure and detention of the vehicle u/s 207 (1) of the Act. It was held that it was only when the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle was used, is violated, the vehicle could be seized by the Authorities. The Appeal filed by the State of Maharashtra was dismissed by the Supreme Court. The contention raised on behalf of the State of Maharashtra that carrying passengers more than prescribed by the permit could be construed to be violation, was rejected. The Supreme Court relied upon the report in *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, and held as under:-

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act". The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results in rejection of words as meaningless has to be avoided. Bearing in mind, the aforesaid principles of construction of statute and on examining the provisions of Section 207 of the Act, which has been quoted earlier, we have no doubt in our mind that the police officer would be authorised to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or without the permit required under Sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. In the case in hand, we are not concerned with the contravention of Section 3 or Section 4 or Section 39 or Sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every condition of permit on being violated or contravened, the police officer would be entitled to detain the vehicle. According to the learned Counsel, appearing for the State of Maharashtra, the expression "purpose for which the vehicle may be used" could be construed to

mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of user is otherwise. We are unable to accede to this contention as in our opinion, the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If the legislature really wanted to confer power of detention on the police officer for violation of any condition of the permit, then there would not have been the necessity of adding the expression "relating to the route on which or the area in which or the purpose for which the vehicle may be used". The use of the aforesaid expression cannot be ignored nor can it be said to be a tautology. We have also seen the Form of permit (Form P.Co. T.), meant in respect of a tourist vehicle, which is issued under Rule 72(1)(ix) and Rule 74(6) of the Maharashtra Motor Vehicles Rules, 1989. On seeing the different columns, we are unable to accede to the contention of the learned Counsel appearing for the State of Maharashtra, that carrying passengers beyond the number mentioned in Column 5, indicating the seating capacity, would be a violation of the conditions of permit relating to either the route or the area or the purpose for which the permit is granted. In this view of the matter, we see no infirmity with the conclusion arrived at by the High Court in the impugned judgment and the detention of the vehicles has rightly been held to be unauthorised and consequently, the compensation awarded cannot be said to be without jurisdiction.....

9. Although, the interpretation of Section 207 was done by the Supreme Court in a different context, yet, the same would apply to Clause (c) to Section 149 (2) (a) (i) of the Act.

10. Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle for the purpose not allowed by the permit under which the vehicle was used".

9. Admittedly, bus no.UP-17C-5880 was simply attached to the UPSRTC and was being used for carrying passengers. Hence, there will not be any violation u/s 149(2)(a)(i)(c) of the Act.

10. Similar question came up for consideration before the Supreme Court in *Uttar Pradesh State Road Transport Corporation v. Kusum & Ors.* III (2011) ACC 460 (SC). In that case, the mini bus No. UP-32T-7344 was attached with UPSRTC by the owner of the bus. Instead of owner, the UPSRTC was held liable to pay the compensation. The Supreme Court held that it was the insured who was liable to pay the compensation and the Insurance Company was under obligation to

indemnify the insured. The Supreme Court made four queries from the counsel for the Insurance Company and observed that the Insurance Company was trying to evade the liability on flimsy grounds or under misconception of law. Paras 30 and 31 of the report are extracted hereunder:-

"30. During the course of hearing, we had asked the following pertinent questions to Mr. Kishore Rawat, learned Counsel for the Insurance Company:

(i) Since the Insurance Company had admittedly received the amount of premium for the period when the mini bus had met with the accident then why should it not be made liable to make the payment of compensation? According to him, in normal circumstances, if the said vehicle would not have been attached with the Corporation for being plied by it on the route of permit granted to it, then of course, the Insurance Company would have no option but to make the payment.

(ii) We had also enquired if there exists different tariffs of premium for the vehicle insured at the instance of owner or for the vehicle which is being attached with the Corporation for being plied by it. He categorically admitted that there is no such difference in the tariff in either of the aforesaid situation and it is same for both.

(iii) We further enquired from him that if an intimation would have been given to the Insurance Company that the vehicle is being attached with the Corporation then what would have been the position? He again informed us that in that case, the Insurance Company would have met the liability of compensation, in case of an accident.

(iv) Lastly, we enquired from him as to under which provision of the Act or the Rule, any statutory duty or otherwise is cast on the owner to seek permission or give an intimation to the Insurance Company in case the vehicle is attached with the Corporation for being plied by it? He candidly conceded that there is neither any statutory duty cast on the owner under the Act or under any Rules to seek permission from the Insurance Company nor it is under any of the orders issued by the Company. According to him, it would have been desirable for the insured to have informed about such a contract.

31. Thus, in the light of the aforesaid, it is clear that Insurance Company is trying to evade its liability on flimsy grounds or under misconception of law."

11. The present case is squarely covered by the report of the Supreme Court in Kusum (supra).

12. The Appellant Insurance Company cannot avoid its liability to pay the compensation.

13. The Appeal is devoid any merit; the same is accordingly dismissed. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.