

(2012) 05 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 5378 of 2010 (in MACT case No. 277 of 2009)

Jamil Khan and Another

APPELLANT

Vs

Bajaj Allianz General Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Citation : (2013) ACJ 1640 : (2013) 1 RCR(Civil) 111

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

**Advocate : Randeep Singh for Mr. Vinod S. Bhardwaj, for the Appellant;
Vandana Malhotra, Advocate for the Respondent No. 1, for the Respondent**

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The present appeal has been preferred by the appellants/ driver and owner against the award dated 21.7.2010, passed by the learned Motor Accident Claims Tribunal, Faridabad, (for short, "the Tribunal"). Briefly stated, the facts of the present case are that on 26.1.2008, Rajbir Singh, since deceased, along with the claimants/respondents was coming from Village Baroli, UP to Subhash Colony Faridabad, in a Maruti Car bearing registration No. HR-29-D-7171 being driven by the deceased himself. At about 8.00 p.m., when they reached near Bapu Nagar, NH-2, the maruti car struck with an Eicher Canter (Temporary No. RJ-02TC-1212/972), which was parked in the middle of the road without parking lights on or indicators, in a negligent manner. Due to the accident, all the occupants of the maruti car received injuries and were removed to the B.K. Hospital, Faridabad, where, the deceased Rajbir Singh succumbed to his injuries.

2. In this background, the claimants-respondents filed claim petition before the learned Tribunal seeking compensation.

3. On the pleadings of the parties, issues were framed, evidence was recorded and that claimants-appellants were awarded an amount of Rs. 6,16,000/-. The

learned Tribunal also exonerated the Insurance Company from satisfying the Award whereas the appellants-driver and owner, were held liable. Feeling dissatisfied against the aforesaid findings, the appellants came up in this appeal.

4. The learned counsel for the appellants contends that the vehicle in question was insured with the respondent-Insurance Company and the driver was holding a valid and effective driving licence. Therefore, it is argued that the learned Tribunal erred in fastening the liability upon the present appellants while exonerating the Insurer.

5. On the other hand, the learned counsel for the respondent-Insurance Company contends that the learned Tribunal has rightly fixed the liability upon the appellants as there was violation of the terms and conditions of the insurance policy.

I have heard the learned counsel for the parties and perused the record.

6. As per the insurance policy, Ex. R2, the offending vehicle was a commercial vehicle. The driver, appellant No. 1 was holding the driving licence, Ex. R1, for LMV + HMV. The vehicle was registered as Light Commercial Vehicle, as per the registration certificate, Ex. R. 4. Therefore, it is apparent that the driver was not holding a valid driving licence for driving a commercial vehicle for which specific endorsement was required to be obtained from the competent authority.

7. There is another deficiency apparent in the form of route permit. The offending vehicle was being plied without such route permit which is again a violation of the terms and conditions of the insurance policy. Hon''ble the Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, has observed as under:-

The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. The High Court was, therefore, not justified in holding the insurer liable.

8. In this view of the matter, this Court feels that the appellants have failed to establish that there was no violation of the terms of conditions of the insurance policy. It being so, no fault can be found in the findings recorded by the learned Tribunal in exonerating the Insurance Company and holding the appellants/driver and owner to indemnify the award. No other point has been raised. The impugned award of the Tribunal is upheld.

9. In view of the above, the present appeal is dismissed being devoid of any merit. The statutory amount deposited at the time of filing of this appeal, be sent

to the learned Tribunal for making payment to the claimants.