

(2016) 03 P&H CK 0407
In the Punjab And Haryana At Chandigarh
Case No : F.A.O No. 552 of 2011 (O&M)

Mani Ram Aggarwal (deceased) through his LRs.	APPELLANT
Vs	
United India Insurance Co. Ltd.	RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2017) ACJ 1082 : (2016) 3 Civil LJ 532 : (2016) 2 TAC 695

Hon'ble Judges : Mr. Darshan Singh, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Pabbi, Advocate, for the Respondent No. 1; Mr. Shekhar Gupta for Mr. Sanjiv Gupta, Advocates, for the Respondent Nos. 2 and 3; Mr. Sandeep Sharma, Advocate, for the Respondent No. 4; Mr. Dheeraj Narula, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Darshan Singh, J. - CM No. 1769-CII of 2011

There is delay of 50 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 50 days in filing the appeal is hereby condoned.

FAO No. 552 of 2011

The present appeal has been preferred by appellant-Mani Ram Aggarwal, the owner of Tata 407 bearing registration No. RJ-31-G-0889, against the award dated 05.04.2010 passed by the learned Motor Accident Claims Tribunal, Sirsa (for short "Tribunal"), vide which respondent no.1, the Insurance company has been granted recovery rights.

2. Compensation to the tune of Rs. 1,60,000/- has been awarded to respondents no.2 and 3/claimant on account of the death of their son Vishal in the motor

vehicular accident which took place on 02.06.2008. The learned Tribunal further held that there was no valid route permit to ply the vehicle in the State of Haryana. Thus, the appellant-insured has violated the terms and conditions of the insurance policy. Learned Tribunal ordered that at the first instance, respondent no.1-Insurance Company will pay the awarded amount to the petitioners and then it shall be at liberty to recover it from the driver-owner jointly and severally. Appellant, the owner of the vehicle has preferred this appeal to assail these findings of the learned Tribunal.

3. I have heard the learned counsel for the parties and have carefully gone through the paper book.

4. Initiating the arguments, learned counsel for the appellant contended that the appellant has produced route permit Ex.R-1 before the learned Tribunal, which was meant for plying the vehicle in the State of Rajasthan. He contended that the learned Tribunal has held the violations of the terms and conditions of the insurance policy simply on the ground that the vehicle in question has been brought to the State of Haryana, though, it only had the route permit to ply only in the State of Rajasthan. He contended that it does not amount to the violation of the terms and conditions of the insurance policy and no such defence is available to respondent no.1-Insurance Company. To support his contentions, he has relied upon cases *United India Insurance Company Limited v. Subhash Chander and others*, FAO No. 3726 of 2006, decided on 18.08.2006 by the Division Bench of this Court, *National Insurance Company Ltd. v. Rajender Giri and others* 2012(2) RCR (Civil) 183 and *Future General Ins. Co. Ltd. v. Surjo Devi and others*, 2013 ACJ 2282. Thus, he contended that respondent no.1-Insurance Company was not entitled for the recovery rights. The appellant has already deposited a sum of Rs. 2,26,816/- for payment to respondent no.1, which is liable to be refunded.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that it is an admitted fact that the accident has taken place in the State of Haryana. The route permit Ex.R-1 was valid only for the State of Rajasthan, which amounts to the violation of the terms and conditions of the Insurance Policy and the learned Tribunal has rightly given the recovery rights to respondent no.1-Insurance Company. To support his contentions, he has relied upon case *Partap Singh v. National Insurance Co. Ltd. And others* 2015 ACJ 2754.

6. I have duly considered the aforesaid contentions.

7. The perusal of the impugned award shows that the route permit Ex.R-1 was produced in evidence by the appellant. Appellant has also stepped into the witness box as RW-2 and deposed that he has obtained the route permit Ex.R-1 of the vehicle in question for carrying the goods in the State of Rajasthan. So, it is an admitted fact that the appellant was having route permit to ply Tata 407 bearing registration no. RJ-31-G-0889 in the State of Rajasthan. But, this accident has taken place at Sirsa i.e. in the State of Haryana. The question for

consideration in this case is as to whether the plying of the vehicle in question in the State of Haryana, though the route permit was valid only for the State of Rajasthan, will amount to violation of the terms and conditions of the Insurance Policy and this defence will be available to the Insurance Company.

8. This Court in case *Hans Raj Chaudhary v. Smt. Nanhi Devi and others* 2013(7) ACJ 2183 has laid down as under:-

"The counsel appearing on behalf of the insurance company still insist that Sections 66 and 69 of the Motor Vehicles Act set out the various terms of permit and one of the terms is that be that the vehicle could traverse only within the area allowed in the permit. The language used in Section 149 that sets out the permissible defences employees the expression of user of a vehicle "for a purpose not allowed by the permit". 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 MV Act, being a beneficial legislation, the issue of liability should be interpreted to the benefit of claimant and to the extent to which the owner obtains indemnity, it makes possible the prospect of recovery so much easier."

9. Similarly, in case *Future General Insurance Co. Ltd. v. Smt. Surjo Devi and others* (Supra) this Court has laid down that a violation of any other term than the purpose for which the permit was to operate will not be a defence which will be available in the scheme of the Motor Vehicles Act.

10. In case *National Insurance Company Ltd. v. Rajinder Giri and others* (Supra) the vehicle had a valid route permit for being plied in State of Rajasthan. The accident took place when the vehicle was being operated in the State of Haryana. This Court laid down as under:-

"It would be said that the vehicle had a valid route permit for being plied in the State of Rajasthan but not in Haryana State. The Transport Authority of Rajasthan State had found the vehicle fit for being plied as goods carriage. Therefore, it cannot be said that the vehicle was being plied without a route permit. The violation of bringing the vehicle to the area of State of Haryana without a valid route permit for plying the same in the said State would not amount to violation of the conditions of the insurance policy and would not give the insurer a defence under Section 149(2) of the Act. The case before me is not a case where there is no route permit at all. Therefore, the ratio of the decision in *National Insurance Co. Ltd.*'s case (supra) would not stand attracted to the facts of this case."

11. In view of the consistent ratio of law laid down in the cases referred above, mere this fact that the truck in question was being operated in the State of Haryana, though it has route permit only for the State of Rajasthan will not constitute the violation of the terms and conditions of the insurance policy and it will not be available as defence to the insurance company.

12. Therefore, it is not established that the insured has violated the terms and conditions of the insurance policy. Consequently, the appellant-Insurance Company cannot escape the liability. Thus, the learned Tribunal has wrongly given the recovery rights to the appellant-Insurance Company. The appellant-Insurance Company was bound to indemnify the appellant and was jointly and severally liable for payment of the amount of compensation.

13. Thus, keeping in view of my aforesaid discussion, the present appeal is hereby allowed. The impugned award dated 05.04.2010 stands modified to this extent that the respondent no.1-Insurance Company shall be jointly and severally liable for payment of the amount of compensation and will have no recovery rights from the driver and owner of the vehicle.

14. Learned counsel for the appellant has placed on file the photocopy of the receipt dated 13.05.2014 to show that the appellant has already deposited Rs. 2,26,816/- with Tahsildar (Revenue) Bhadra to satisfy the recovery rights. The aforesaid amount be refunded to the appellant as per rules.

15. The Registry is directed to refund the statutory amount of Rs. 25000/- deposited by the appellant vide bank draft no. 663181 dated 30.08.2010 as per rules, if not already disbursed to the claimants.