

(2012) 10 DEL CK 0012
In the Delhi High Court
Case No : MAC. APP. 429 of 2012

The New India Assurance Company Ltd.	APPELLANT
Vs	
Sunil Kumar Jha and Others	RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(i)(c), 66

Citation : (2012) 10 DEL CK 0012

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

Bench : Single Bench

Advocate : K.K. Bhat, for the Appellant; Neelam Sharan, for R-1 and Mr. Yash Palkhanna, for R2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CM APPL. No. 7027/2012

Delay of 48 days in filing the Appeal is condoned.

The application is allowed.

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1. By virtue of this Appeal the Appellant Insurance Company impugns the judgment dated 26.11.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 13,07,000/-, the Appellant's plea of breach of the terms and conditions of the policy was rejected. The only ground urged is that the owner of the offending vehicle i.e. Respondent No. 3 herein did not possess any permit to ply the same and thus Respondent No. 3 committed breach of the terms and conditions of the policy as laid down in Section 149(2)(a)(i)(c) of the Motor Vehicles Act (the Act) which form part of the insurance policy. The learned counsel for Respondents No. 2 and 3 opposes the Appeal and places reliance on Section 66 sub-section 3 clause (i) of the Act

whereby goods vehicles upto the gross weight of 3000 kgs. is exempted from filing any permit. Section 66 of the Act is extracted hereunder:-

66. Necessity for permits.-(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contact carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) ...

(3) The provisions of sub-section (1) shall not apply-

(a) ...

(b) ...

(c) ...

(d)...

(e)...

(f)...

(g)...

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) ...

(k) ...

2. From sub-section 3(i) of Section 66 of the Act it is evident that Respondent No. 3 did not require any permit to ply the offending vehicle as its weight was only 2400 kgs

3. There is no question of any breach of the terms and conditions of the policy. Therefore, the Appeal has to fail; the same is accordingly dismissed.

4. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant

Insurance company.

5. The amount deposited shall be disbursed in favour of the First Respondent in terms of the order passed by the Claims Tribunal. CM APPL. No. 7206/2012 and CM APPL. 7204/2012 stand dismissed.