

(2014) 04 P&H CK 0247

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 1800 of 2012 (O&M), MACT Case No. 92-RBT of 2009/2010, FAO 1801 of 2012 (O&M), MACT Case No. 88 of 2009/2010 and FAO 1802 of 2012 (O&M), MACT Case No. 91-RBT of 2009/2010

Gurmeet Singh

APPELLANT

Vs

National Insurance Company

RESPONDENT

Date of Decision: April 2, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 13
- Motor Vehicles Act, 1988 - Section 147, 149, 163A, 165, 168

Citation: (2014) 3 RCR(Civil) 1013**Hon'ble Judges:** Jitendra Chauhan, J**Bench:** Single Bench**Advocate:** Deepak Suri, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Jitendra Chauhan, J.

This judgment shall dispose of all the four appeals, filed by the owner and driver of the offending vehicle, challenging the impugned award dated 7.11.2011, passed by the learned Motor Accidents Claims Tribunal, Ambala (in short "the Tribunal"). It is averred in the grounds of appeal that the learned Tribunal erred in fastening the liability on the owner on the ground that the vehicle did not have a route permit. It is further averred that there is no violation of the insurance policy and on the ground of non-production of route permit, the Insurance Company cannot escape from its liability, as the vehicle was insured at the time of accident.

2. On the other hand, the learned counsel appearing for the Insurance Company opposes the averments made in the grounds of appeal and submits that the learned Tribunal has rightly held the appellants liable to indemnify the award, as the vehicle was not holding a valid route permit.

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

4. A Division Bench of this Court while deciding FAO No. 3726 of 2006 titled as "United India Insurance Company Limited v. Subhash Chander and others", on 18.8.2006, considered the case of "Challa Bharathamma's case (supra)" has dealt with a similar question and held as under:-

"We have carefully perused the judgment and we find that, in the said case, there was no permit at all in terms of definition of permit, as contained in Section 2(31) of the Motor Vehicles Act, 1988 (for short Rs. the Act"). The said definition, on reproduction, reads as under:-

"2(31) "Permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle." We have also perused Section 149 of the Act which relates to insurer's liability and it is reproduced as under:-

"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 noticed 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 organised 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

(b) 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.

(3) Where any such judgment as is referred to in sub-section (i) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.- For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted u/s 165 and "award" means an award made by that Tribunal u/s 168."

None of the provisions contained in both the above Sections refers to route permit. Under the circumstances, we are not inclined to accede to the submissions of learned counsel for the appellant, and further, no such plea was ever taken in the written statement before the Tribunal."

5. In the instant case, route permit had not been brought on record. The above-cited case law shows that there is no requirement of law, to possess a route permit. Section 2(31) of the Motor Vehicles Act talks about "Permit" only. Section 149 of the Act is also silent about route permit. Thus, the driver, owner and the Insurer of the offending vehicle are held liable jointly and severally. As the vehicle was insured at the time of accident, therefore, the Insurance Company is directed to indemnify the award. In the light of the above cited law, all the four appeals are allowed and the findings with regard to the liability is modified to the above extent. If the amount has already been paid, the appellants are at liberty to recover the same from the Insurance Company, as per law.