

(2014) 04 P&H CK 0261

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 230 of 2012 (O&M) and M.A.C. Case No. 43 of 2008

Ashok Kumar Khemaka

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision: April 9, 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) 1018

Hon'ble Judges: Jitendra Chauhan, J

Bench: Single Bench

Advocate: Rajender Kumar and M.S. Tewatia, Advocate for the Appellant; D.P. Gupta and Sachin Gupta, Advocate for the Respondent

Judgement

Jitendra Chauhan, J.

The present appeal has been filed by the owner and driver of the offending vehicle, challenging the impugned Award dated 7.12.2010, passed by the learned Motor Accident Claims Tribunal, Sangrur (in short "the Tribunal"). It is contended by the learned counsel for the appellant that the learned Tribunal erred in fastening the liability upon the appellant, as the owner did not produce the route permit. However, the owner has already paid the entire taxes as levied by the State Govt. till 30.6.2008, whereas the accident occurred on 13.4.2007. The accident occurred in District Yamuna Nagar and the vehicle was also registered at Yamuna Nagar. No official was examined from RTO, Yamuna Nagar or no issue with regard to permit was framed by the learned Tribunal. Thus, he prays that the finding with regard to recovery right given to the Insurance Company may be set aside.

2. On the other hand, the learned counsel for the respondent - Insurance company vehemently opposes the prayer of the appellant and submits that the learned Tribunal has rightly granted recovery right, as the appellant did not have any route

permit at the time of accident. Therefore, the present appeal may be dismissed.

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

4. The offending vehicle i.e. Truck was a goods carrying vehicle. It was owned by the appellant and was plying in District Yamuna Nagar and the accident also occurred in District Yamuna Nagar.

5. 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, considering the case of "Challa Bharathamma (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 "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 authorising 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."

6. 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. In view of the above law laid down in Subhash Chander and others" case (supra), the present appeal is allowed. The finding with regard to grant of recovery right to the Insurance Company is set aside and the impugned Award is modified to the above extent.