

## **The New India Assurance Co. Ltd. Vs Mohd. Iqlam, Mohd. Aftab Alam and Mohd. Fahim**

**Court:** Delhi High Court

**Date of Decision:** Oct. 24, 2008

**Acts Referred:** Motor Vehicles Act, 1988 & Section 149(2), 170, 173, 2(31), 66

**Citation:** (2010) ACJ 1025

**Hon'ble Judges:** Vidya Bhushan Gupta, J

**Bench:** Single Bench

**Advocate:** Salil Paul, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

V.B. Gupta, J.

The appellant/New India Insurance Company has filed the present appeal u/s 173 of Motor Vehicles Act, 1988 (for short as "Act") challenging the award dated 1st April, 2008 passed by Sh. A.S. Jayachandra, Presiding Officer, MACT (for short as "Tribunal"), Delhi.

2. Vide impugned judgment, the Tribunal has awarded a compensation of Rs. 2,56,000/- along with 7.5% interest from the date of petition till the

date of award (excepting for the periods not specifically allowed) to the injured towards the injuries sustained by him in a road accident.

3. Brief facts of this case are that Respondent No. 1/Mohd. Iqlam, on the date of accident i.e. 31st July, 2006, was working as a labourer in

vehicle No. DL-1-ID-5300, which is a truck. This truck was overloaded and when it reached at Wazirabad Road near Rajiv Nagar Bus Stand, all

of a sudden, the putta of kamani of front tyre had broken and the offending vehicle fell down and Respondent No. 1 received grievous injuries on

his left leg and body. He has attributed the negligence on the part of the driver of the offending truck.

4. Respondent No. 2/Mohd. Aftab Alam, is the driver of the offending truck, whereas Respondent No. 3/Mohd. Fahim, is the owner and the

offending truck was insured with appellant.

5. The driver and owner of the offending truck filed their common written statement in which they denied the factum of accident stating that no

accident was caused by Respondent No. 2 on the given date, time and place.

6. Appellant/Insurance Company in its written statement has admitted the factum of insurance. However, it is stated that it has no knowledge about

the alleged accident and the manner in which the accident took place.

7. Further, a preliminary objection has taken by the Appellant in its written statement that at any stage of proceedings if it appears and this Court is

satisfied that there is collusion between the claimant and owner/driver or they failed to contest the claim on merit, then Appellant shall take over the

defence of the Respondents 2 & 3 herein, u/s 170 of the Act without the prejudice to the provision of Section 149(2) of the Act.

8. It has been contended by the learned Counsel for the Appellant that the vehicle was overloaded with rice with weight of 9000 kg whereas, as

detailed in the insurance policy, the unladen weight of the vehicle was 6800 kg. only, and thus there was violation of permit.

9. The Tribunal has discussed the provisions of Section 66, 86 and 88 of the Act without considering the ground of the Appellant with regard to

the overloading of the vehicle.

10. Other contention is that the Tribunal has erred in holding that inspite of the fact that there being violation of permit as admittedly, annual

authorization fee of Rs. 1,000/- has not been paid but because the permit was not cancelled, the insurance company is liable. It is stated that

National Permit issued from 29.9.2004 to 28.9.2009 for five years is not valid because, for a national permit to be valid it is mandatory that the

authorization fee of atleast four states including the state for which the permit was being issued vide Section 88 (14)(b)(c) of Motor Vehicles Act

was annually paid.

11. In the present case authorization fee was deposited on 29.9.2004 which is valid from 1.10.2004 to 30.9.2005 vide authorization report Ex.

R3W1/B which does not cover the date of accident, i.e., 31.7.06.

12. Even the owner has admitted in his cross examination that he has not deposited the authorization fee after 30.9.2005.

13. Relevant provisions in this case are Section 2(31), 66 & 88 of the Act which read as under;

Section 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.

Section 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

contract 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) x x x x

(3) x x x x

(4) Subject to the provisions of Sub-section (3), Sub-section (1) shall, if the State Government by rule made u/s 96 so prescribes apply to any

motor vehicle adapted to carry more than nine persons excluding the driver.

Section 88- Validation of permits for use outside region in which granted

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport authority of any one region shall not be valid in any other

region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State

shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport

Authority concerned.

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions

within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of

the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate within the same State, but part of such route lies in

any other State and the length of such part does not exceed sixteen kilometers, the permit shall be valid in the other State in respect of that part of

the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport authority or the Regional

Transport Authority of that other State:

Provided also that-

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall

display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to

the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport authority

or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in Sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the

whole State or in such regions within the State as may be specified in the permit.

(3) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had

granted the permit and may likewise vary any condition attached to the permit by the authority by which the permit was granted.

(4) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of

countersignatures of permits.

(5 to 8) x x x

(9) Notwithstanding anything contained in Sub-section (1) but subject to any rules that may be made by the Central Government under Sub-

section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the

whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified

in such permit in accordance with the choice indicated in the application and the provision of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86, [Clause

(d) of Sub-section (1) of Section 87 and Section 89] shall, as far as may be, apply in relation to such permits.

(10) Omitted

(11) x x x x

(12) Notwithstanding anything contained in Sub-section (1), but, subject to the rule that may be made by the Central Government under Sub-

section (14), the appropriate authority may, for the purpose of encouraging long distance inter-State road transport, grant in a State, national

permits in respect of goods carriages and the provisions of Sections 69, 77, 79, 80, 81, 82, 83, 84, 85, 86, [Clause (d) of Sub-section 1 of

Section 87 and Section 89] shall, as far as may be, apply to or in relation to the grant of national permits.

(13) Omitted

(14)(a) The Central Government may make rules for carrying out the provisions of this section.

(b) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,

namely:

(i) the authorization fee payable to the issue of a permit referred to in sub-Sections (9) and (12);

(ii) the fixation of the laden weight of the motor vehicle;

(iii) the distinguishing particulars or marks to be carried or exhibited in or on the motor vehicle

(iv) the colour or colours in which the motor vehicle is to be painted;

(v) such other matters as the appropriate authority shall consider in granting a national permit.

Explanation.- In this section,-

(a) "appropriate authority", in relation to a national permit, means the authority which is authorized under this Act to grant a goods carriage permit;

(b) "authorization fee" means the annual fee, not exceeding one thousand rupee, which may be charged by the appropriate authority of a State to

enable a motor vehicle, covered by the permit referred to in Sub-sections (9) and (12) to be used in other States subject to the payment of taxes

or fees, if any, levied by the States concerned;

(c) "national permit" means a permit granted by the appropriate authority to goods carriage to operate throughout the territory of India or in such

contiguous States, not being less than four in number, including the State in which the permit is issued as may be specified in such permit in

accordance with the choice indicated in the application.

14. Regarding non-payment of authorisation fee, the Appellant examined R3W1 a witness from State Transport Authority who produced the

permit details Ex.R3W1/A and stated that as per record, national permit is issued on 29.9.2004 to 28.9.2009. The authorisation fee was

deposited on 29.9.2004 valid from 1.10.2004 to 30.9.2005. Thereafter, no authorisation fee was deposited in their authority as per records. The

authorisation report is ExR3W1/B.

15. In the cross examination by the owner, he denied the suggestion that no permit authorization is required for running the vehicle in the local area

of NCT.

16. The Tribunal held in this regard that;

The opening words of Section 88 in the Act, reads "violation of permits for use outside region in which granted." The opening key words of this

particular section shows that the Section deals with the validation of permits outside the region in which it is granted. It is not the case of the Ins.

Co. that that the accident occurred outside the region from which the permit was issued.

I am not convinced with the argument of the Ld. Counsel of the Ins. Co. that the permit was a non-est as on the date of accident so as to repudiate

the policy for the following reasons.

a) it is also clear from the record that the permit is not cancelled;

b) the cancellation of permits are dealt u/s 86. No proceedings were initiated against the permit holder for cancellation of the permit on the ground

of non payment of authorization fee as per the procedure under law;

c) just because the validation or authorization fee is not paid, in so far as no proceedings u/s 86 having been initiated by the authority concerned, it

cannot be said that the permit has become invalid within the region of its issuance;

d) considering that Section 88 only deals with the situations of validation of permits outside the region, the intention of legislature is to be

understood. In The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , it was held that ""the Courts

always presume that the legislature inserted every part thereof for a purpose and the legislature's intention is that every part of the statute should

have effect."" The proper construction of this particular provision connotes that the authorization fee is required only for the purposes of validation

of the permits outside the region from where it was issued as the opening key words of this Section introduce themselves. The accident occurred

within the region from where the permit was issued. Thereafter, the non-validation of the permit as on the date of accident becomes immaterial for

the purposes of indemnifying the third party risk in the policy.

e) the non payment of authorization fee is a fact which concerns the issuing authority and the holder of the permit. In so far as the permit having not

been cancelled properly by the authority, the Insurance Company cannot be allowed to take umbrage under the lapses of the permit holder to deny

the obligation for which the premium was collected.

17. The objections with regard to non-payment of annual authorisation fee of permit or overloading, were nowhere, taken by Appellant in its

written statement. I fail to understand as to under what provisions of law, the Tribunal allowed the Appellant to take such pleas, which has not

been specifically taken by Appellant in its written statement.

18. Section 88 of the Act deals with the validation of permits ""for use outside the region"" in which it is granted. Thus the authorisation fee is

required only for the purposes of validation of the permits ""for use outside the region"".

19. In the present case, the accident occurred in Delhi and the permit issued as Ex.R3W1/A shows, that the same has been issued for Delhi

Region also. Thus, the accident occurred within the region for which the permit was issued. Hence, there is no violation of permit at all.

20. Under these circumstances, the present appeal filed by the Insurance Company is most bogus and frivolous one and has been filed without

ascertaining the true and correct facts.

21. Hence, the present appeal is, hereby, dismissed with costs of Rs. 10,000/-.

22. Appellant is directed to deposit the costs within four weeks from today by way of a cross cheque in the name of Registrar General of this

Court.

23. List on 4th December, 2008 for compliance.

24. Trial court record be sent back.