

## Mahender Singh Vs Oriental Insurance Co. Ltd. and Others

**Court:** Delhi High Court

**Date of Decision:** May 10, 2012

**Acts Referred:** Motor Vehicles Act, 1988 " Section 147, 149(2), 163A, 207(1), 3

**Citation:** (2013) ACJ 2570 : (2012) 6 ILR Delhi 477

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

**Bench:** Single Bench

**Advocate:** Brijender Khurana, for the Appellant; D.K. Sharma, Advocate for the Respondent No. 1 Insurance Company, for the Respondent

**Final Decision:** Allowed

### Judgement

G.P. Mittal, J.

An interesting question as to the interpretation of Section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988 arises in this case

as while awarding a compensation of Rs. 1,83,000/- in favour of the Second Respondent, recovery rights were granted against the Appellant

owner of the TSR No. DL-1W-0025. It is alleged that the TSR was involved in the accident which occurred on 25.03.2006 resulting in the death

of Naushad, a bachelor aged 24 years. A Claim Petition u/s 163A of the Motor Vehicles Act was preferred by the Second Respondent claiming a

compensation of Rs. 10,00,000/- for the death of her son. The Respondent No. 2 examined ASI Krishan Kumar, P.S. Sultanpuri, IO of the case

in FIR No. 444/2006 registered in respect of the accident. His testimony regarding involvement of the vehicle (DL-1W-0025) was not challenged

in the cross-examination by the Appellant. The Claims Tribunal returned a finding that the accident was caused on account of use of vehicle No.

DL-1W-0025 and awarded the compensation as stated above.

2. A feeble attempt was made by the learned counsel for the Appellant to challenge this finding of fact. However, I do not find any reason to take a

view other than the one reached by the Claims Tribunal in view of the IO's unchallenged testimony.

3. It is urged by the learned counsel for the Appellant that there was no breach of the terms of the policy as envisaged u/s 149(2) of the Act and

thus the Claims Tribunal erred in granting recovery rights against the Appellant. It is argued that Section 149(2)(a)(i)(c) entitles the insurer to

defend the action for payment of compensation if the vehicle was used for a purpose not allowed by the permit under which the vehicle was being

used. The learned counsel urges that the user/driving of the vehicle by a person other than the registered owner cannot be said to be use of the

vehicle for a purpose not allowed by the permit. To appreciate the contention raised, it would be appropriate to extract Section 149(2)

hereunder:-

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1).....

(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 of award is given the insurer had notice 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 organized 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 (emphasis supplied)

4. I obtained the conditions for grant of a permit for a TSR plying in NCT of Delhi from the transport department, which are also available on the

website of the Transport Department, Govt. of National Capital Territory of Delhi. The same are extracted hereunder:-

1. The vehicles shall ply as per the rate/tariff approved by the Govt./State Transport Authority from time to time and exhibited in the meter.

2. The fare distance chart as per the notified fares duly approved by the State Transport Authority shall be displayed prominently available at the

back of the seat of the driver inside the vehicle as prescribed by the State Transport Authority.

3. Only electronic fare meter duly approved and duly calibrated by the Competent Authority or any other metering device duly approved by the

competent Authority shall be installed. The Electronic Fare Meter shall be kept in proper working condition.

4. The number of passengers shall not exceed 3 adults excluding driver. A child of not more than 12 years of age shall be reckoned as a half and a

child of not more than three years of age shall not be reckoned.

5. The driver shall not refuse to ply any place within the NCT of Delhi or the area specified from time to time.

6. The driver shall not misbehave with the passenger/intending passenger.

7. The driver shall extend help and assistance to all senior citizens and disabled while boarding and alighting the vehicles.

8. The driver shall wear the uniform in grey colour with his/her smart card based Public Service Vehicle (PSV) badge prominently displayed on

uniform.

9. The driver shall undergo training as may be prescribed by the Commissioner (Transport) from time to time and in the manner prescribed.

10. The vehicle shall display the Helpline No. of the Transport Department on the rear side of the vehicle also name and address of the permit

holder.

11. The vehicle shall affix registration number plate in Braille as per design approved by the Department at the space prescribed by Transport

Department.

12. The permit holder shall inform any change in his/her residential address in form 33 of CMVR, 1989 within the stipulated period i.e. within 30

days to the Registering Authority.

13. Hire purchase, lease, hypothecation deed shall be allowed for Nationalized Banks. Scheduled Banks and Non-Banking Financial companies

duly approved by RBI or any other competent authority notified by Central Govt. in this regard.

14. The permit holder shall exercise such supervision as is necessary to ensure that the vehicle is operated in conformity with the Motor Vehicle

Act and the rules made there-under and shall be liable for action for

violation of permit condition without prejudice to the action that may be legally permissible to be taken against the driver.

15. The permit holder shall be liable for the suspension/ cancellation of the permit for any violation of the permit condition.

16. The vehicle shall be kept neat and clean at all time during the operation.

17. The vehicle must be equipped with the First Aid Box containing material as specified in DMV Rules, 1993.

18. The vehicle must be equipped with the Fire Fighting equipment as specified in DMV Rules, 1993.

19. The drivers identity/particulars along with his/her photograph to be displayed at prominent place inside the wind screen.

20. A complaint book shall be maintained with serial numbers printed and issued by the Transport Department, will be available at the Complaint

Box installed at prominent place.

21. The driver must be of good character without any criminal record.

22. The permit holder shall be responsible for the behavior, reliability of the Auto Drivers and to ensure the proper police verification is done.

5. Thus, a perusal of the condition for issuance of permit, inter alia, are that the vehicle shall be kept neat and clean at the time of operation

(condition No. 16); that the vehicle must be equipped with the First Aid Box; that the driver must display the particulars of his identity and

photograph at a prominent place inside the windscreen (Condition No. 19); that the driver must be of good character and without any criminal

record; the driver shall wear uniform in gray colour with his/her smart card based Public Service Vehicle (PSV) badge prominently displaying on

the uniform (Condition No. 8).

6. Can it be said that the Insurance Company would be able to avoid liability if the vehicle is not kept clean or the driver is not wearing the

uniform? It is not each and every condition of permit contravention of which would allow the Insurance Company to avoid the liability. On the

other hand, a close reading of the Clause (c) to Section 149 (2) (i) (a) would show that it is only the user of the transport vehicle for the purpose

not allowed by the permit would enable the Insurance Company to defend the action to satisfy an award in a motor accident where the risk is

covered by a policy obtained u/s 147 of the Act.

7. The interpretation of contravention of condition of permit envisaged u/s 66 of the Act and the contravention of condition of permit with respect

to the purpose for which the vehicle may be used came up for consideration before the Supreme Court in State of Maharashtra and Others Vs.

Nanded-Parbhani Z.L.B.M.V. Operator Sangh, albeit in a different context. In the said case, the police had seized certain vehicles for carrying

passengers in excess of the numbers permitted by the condition of permit issued by the Transport Authority. The action was challenged by the

Association of Transporters by virtue of a writ petition before the Aurangabad Bench of Bombay High Court. The High Court analyzed the

different provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder and on consideration of the same came to the conclusion

that it is not each and every violation of the condition of the permit which would authorize the seizure and detention of the vehicle u/s 207 (1) of the

Act. It was held that it was only when the condition of permit relating to the route on which or the area in which or the purpose for which the

vehicle was used, is violated, the vehicle could be seized by the Authorities. The Appeal filed by the State of Maharashtra was dismissed by the

Supreme Court. The contention raised on behalf of the State of Maharashtra that carrying passengers more than prescribed by the permit could be

construed to be violation, was rejected. The Supreme Court relied upon the report in Kanai Lal Sur Vs. Paramnidhi Sadhukhan, and held as

under:-

If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the

ground that such construction is more consistent with the alleged object and policy of the Act". The intention of the legislature is required to be

gathered from the language used and, therefore, a construction, which requires for its support with additional substitution of words or which results

in rejection of words as meaningless has to be avoided. Bearing in mind, the aforesaid principles of construction of statute and on examining the

provisions of Section 207 of the Act, which has been quoted earlier, we have no doubt in our mind that the police officer would be authorised to

detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or

without the permit required under Sub-section (1) of Section 66 or in contravention of any condition of such permit relating to the route on which

or the area in which or the purpose for which the vehicle may be used. In the case in hand, we are not concerned with the contravention of Section

3 or Section 4 or Section 39 or Sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of

permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or

the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every

condition of permit on being violated or contravened, the police officer would be entitled to detain the vehicle. According to the learned Counsel,

appearing for the State of Maharashtra, the expression "purpose for which the vehicle may be used" could be construed to mean that when the

vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of user is otherwise. We are unable to

accede to this contention as in our opinion, the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used

as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice

versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If

the legislature really wanted to confer power of detention on the police officer for violation of any condition of the permit, then there would not

have been the necessity of adding the expression ""relating to the route on which or the area in which or the purpose for which the vehicle may be

used"". The user of the aforesaid expression cannot be ignored nor can it be said to be a tautology. We have also seen the Form of permit (From

P.Co. T.), meant in respect of a tourist vehicle, which is issued under Rule 72(1)(ix) and Rule 74(6) of the Maharashtra Motor Vehicles Rules,

1989. On seeing the different columns, we are unable to accede to the contention of the learned Counsel appearing for the State of Maharashtra,

that carrying passengers beyond the number mentioned in Column 5, indicating the seating capacity, would be a violation of the conditions of

permit relating to either the route or the area or the purpose for which the permit is granted. In this view of the matter, we see no infirmity with the

conclusion arrived at by the High Court in the impugned judgment and the detention of the vehicles has rightly been held to be unauthorised and

consequently, the compensation awarded cannot be said to be without jurisdiction.....

8. Although, the interpretation of Section 207 was done by the Supreme Court in a different context, yet, the same would apply to Clause (c) to

Section 149 (2) (a) (i) of the Act.

9. Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a

passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport

Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle

for the purpose not allowed by the permit under which the vehicle was used.

10. The Claims Tribunal erred in holding that there was violation of Clause (c) of Section 149(2)(a)(i) of the Act.

11. The impugned order cannot be sustained. The Appeal is accordingly allowed. The impugned order to the extent it grants recovery rights

against the Appellant is set aside. The Appeal is allowed in above terms.