***Before Lisa Gill, J.***

**D.V.M. PUBLIC SCHOOL**—*Appellant*

*versus*

**BHAGWATI AND OTHERS**—*Respondents*

**FAO No.5340 of 2014**

October 23, 2019

***Motor Vehicles Act, 1988—Motor accident—Bus fell in drain causing death and injuries to passengers—Offending bus being plied without a valid permit—Tribunal exonerates insurer—Appeals and revisions by owner and driver of bus—Held, use of vehicle in a public place without permit is a fundamental statutory infraction—Insurer cannot be held liable—Further held, liability rightly fastened jointly and severally on both driver and owner—Appeals and revisions dismissed.***

*Held* that it is, thus, apparent that the offending vehicle was indeed being plied without a permit as is required under the provisions of law. It is a settled position of law that use of vehicle in a public place without a permit is a fundamental statutory infraction. It is specifically held by the Hon'ble Supreme Court in *Amrit Pal Singh and another Vs. Tata AIG General Insurance Co. Ltd. and others 2018(3) RCR (Civil) 131* that a situation where a vehicle is being plied in a public place without a permit, cannot be equated with the absence of a license or fake license or a license for different kind of vehicles. In *Amrit Pal Singh's* case (supra), the insured had not brought any evidence on record to prove that he had a permit for plying the vehicle. In fact, the stand taken, was of non-involvement of the vehicle in the accident, as is the case in the present appeals. In this situation, it was held by the Hon'ble Supreme Court that the onus to discharge the liability cannot be cast on the insurer. Reference in this regard can also be made gainfully to the judgment of Hon'ble Supreme Court in *National Insurance Company Vs. Chella Bharathamma 2004(4) RCR (Civil) 399*. In the given facts and circumstances of the case, learned Tribunal has rightly held that there is a fundamental breach of the terms and conditions of the insurance policy.

(Para 10)

*Further held* that in *Vijay Laxmi's* case, it is specifically held in para 7 of the decision that the liability for the payment of amount of

compensation would be of the driver as well as of the owner. The owner, it is held, cannot be absolved of his liability to pay the compensation as was sought in the said case. Similar is the situation in the case of *Divisional Manager National Insurance Company Ltd.* (supra). Therefore, the learned Tribunal has correctly held the driver and the owner of the offending vehicle to be jointly and severally liable to pay the compensation. It is reiterated at this stage that there is no appeal or any prayer on behalf of the claimants though they are duly represented before this Court.

(Para 12)

Inderjit Sharma, Advocate
*for the appellant* in FAO Nos. 5340, 5341 & 5342 of 2014,
*for the petitioner* in CR No. 4786 of 2014,
for respondent-owner in FAO Nos. 9273, 9274 & 8753 of 2014
and
for respondent no.2-owner in CR No.186 of 2015.

Sushil Jain, Advocate
*for the appellants* in FAO Nos. 9273, 9274 and 8753 of 2014
and *for the petitioner* in CR No. 186 of 2015.

B.S. Tewatia, Advocate
for respondents no.1 to 8 in FAO No. 5340 of 2014,
for respondents no.1 to 5 in FAO No. 5341 of 2014 and
for respondents no.1 to 4 in FAO No. 5342 of 2014.

Rajbir Singh, Advocate
for respondent-insurance company.

**LISA GILL, J. oral**

(1) This judgment shall dispose of FAO-5340-2014 (DVM Public School Vs. Bhagwati and others), FAO-5341-2014 (DVM Public School Vs. Hari Chand and others), FAO-5342-2014 (DVM Public School Vs. Kiranwati and others), CR-4786-2014 (DVM Public School Vs. Ramesh Chand and others), CR-186-2015 (Ravi alias Ravinder Vs. Ramesh Chand and others), FAO-8753-2014 (Ravi alias Ravinder Vs. Bhagwati and others), FAO-9273-2014 (Ravi alias Ravinder Vs. Kiranwati and others) as well as FAO-9274-2014 (Ravi alias Ravinder Vs. Hari Chand and others) as the above mentioned appeals/civil revisions arise out of common award dated 16.10.2013, passed by the learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal').

(2) As many as 30 claim petitions had been filed as the same were arising out of the motor vehicle accident, which took place on 27.02.2009, due to the rash and negligent driving of the offending bus bearing Registration No.HR-55-7073, being driven by its driver Ravi alias Ravinder. It is pleaded in the claim petitions that on 27.02.2009 Mahesh Chand along with Jagbir was proceeding to Palwal from village Dhatir in a Maruti Alto car bearing registration No. HR-26-4107. The car was being driven by Jagbir. When the car reached near the drain of village Dhatir, about 1:15 A.M., the offending bus being driven by its driver namely Ravi @ Ravinder in a rash and negligent manner, struck against the car from behind. The car turned turtle and the offending bus fell in the drain. Sixty five (65) to seventy (70) passengers were on the bus. Gaje Singh, Daya Ram and Attar Singh succumbed to their injuries. Ramesh Chand alongwith others are stated to have received multiple grievous injuries on their person. FIR No. 63 dated 27.02.2009 under Sections 279, 337, 304-A IPC was registered at Police Station Sadar Palwal against the driver namely Ravi @ Ravinder.

(3) Four of the said claim petitions were allowed i.e. in respect to the claims set up on account of death of Gaje Singh, Daya Ram, Attar Singh and the injuries suffered by one Ramesh Chand. Compensation of Rs.7,50,000/- was awarded to the claimants in RBT-7 of 18.11.2010/07.09.2013, titled as Smt. Bhagwati and others Vs. Ravi alias Ravinder and others. Compensation of Rs.6,15,000/- was awarded to the claimants in RBT-30 of 04.11.2011/07.09.2013 titled as Smt. Kiranwati and others Vs. Ravi alias Ravinder and others. Compensation of Rs.1,40,000/- was awarded to the claimants in RBT-32 of 2009/2013 titled as Hari Chand and others Vs. Ravi alias Ravinder and others and compensation of Rs.85,000/- was awarded to the injured-claimant Ramesh Chand on account of injuries suffered by him in the accident in RBT-31 of 12.11.2011/07.09.2013 titled as Ramesh Chand Vs. Ravi alias Ravinder and others.

(4) The respondent-insurance company was not held liable to indemnify the insured and pay the compensation, as the learned Tribunal concluded that a valid permit to ply the offending bus was not there and it was being plied in contravention of the terms and conditions of the insurance policy.. The owner and driver of the offending bus were held jointly and severally liable to pay the compensation awarded.

(5) Aggrieved therefrom present appeals/revisions have been

filed by the owner and the driver of the offending bus. Learned counsel for the appellants state that there is no challenge to the quantum of the compensation as awarded by the learned Tribunal and it is only their liability as fixed by the learned Tribunal, which is under challenge. It is relevant to note at this stage that no appeals or cross objections have been filed by the claimants seeking any enhancement of the compensation as awarded by the learned Tribunal.

(6) Learned counsel for the owner of the offending bus submits that the learned Tribunal has grossly erred in absolving the insurance company of its liability to pay the compensation. It is argued that the offending vehicle in this case is a school bus, therefore, there is no requirement whatsoever to hold a route permit for plying on the school bus. It is further contended that the learned Tribunal has wrongly concluded that the bus was being used for commercial purposes in as much as passengers were being ferried therein. The occupants of the bus, it is submitted, were persons connected with some school function and they were being accordingly transported. The bus was not being used for any commercial purposes. It is further submitted that the offending vehicle was admittedly insured in a legal and valid manner with the insurance company. The premium had been duly paid. The evidence on record does not prove any breach of the terms and conditions of the insurance policy. Thus, the owner is not liable to pay the compensation. It is, thus, prayed that the appeals filed by the owner of the offending bus be allowed and the insurance company be held liable to pay the compensation.

(7) Learned counsel for the appellant-driver argues that learned Tribunal has wrongly held him liable to pay the compensation. It is argued that in any situation, it is the owner of the offending vehicle, which/who is liable to pay the compensation. The owner is very much a party to the petitions, therefore, compensation has to be recovered from the owner. Learned counsel relies upon the judgments of the Full Bench decision of this Court in ***Pirthi Singh and others*** *versus* ***Binda Ram and others***[1]***, Smt. Vijay Laxmi Shivajirao Jagtap and others*** versus ***Delhi Automobiles (Pvt.) Ltd. Ferozepur Road, Ludhiana and others***[2] and ***a judgment of Hon'ble Patna High Court in Divisional Manager, National Insurance Company Ltd. Khagaria***

[1] 1987 AIR (Punjab) 56
[2] 1987(2) PLR 464

*versus* ***Mazda Khatoon***[3]. It is thus, prayed that the appeals filed by the driver be allowed and he be exonerated completely of the liability imposed upon him.

(8) Per contra, learned counsel for the insurance company submits that the present is a case where even a permit to ply the vehicle has not been produced by the owner. Therefore, absence of a permit is a clear breach of the terms and conditions of the insurance policy, thereby exonerating the insurance company from its liability. Mere payment of the premium is not enough to fasten liability upon the insurance company in the wake of breach of a fundamental term and condition of the insurance policy. It is further submitted that it is apparent from the evidence on record that the offending bus was being used for ferrying passengers for consideration, hence the bus was being used for commercial purposes.. The owner, it is submitted, in its written statement has not even taken any such defence but has taken the plea of non-involvement of the offending vehicle in the accident and that no passengers were being ferried on the said bus. Reliance has been placed upon the judgment of this High Court in ***M.S. Middle High School and another*** versus ***HDFC Ergo General Insurance Company*** FAO No. 7555 of 2015, decided on 26.09.2017, which has been upheld by the Hon'ble Supreme Court in SLP No.31406 of 2017, vide order dated 22.11.2017.

(9) I have heard learned counsel for the parties and have gone through the record with their able assistance.

(10) Learned counsel for the appellant-owner has tried to set up a case that a valid permit to ply the offending vehicle is on record and the mere absence of a route permit is not enough to saddle the owner with the liability to pay the compensation. However, after a perusal of the record, learned counsel for the appellant/owner is unable to deny that even a permit to ply the vehicle is not available on record. It is relevant to note at this stage that an opportunity was afforded to the appellant/owner to furnish the permit, if any, even at this stage. However, the same is not forthcoming. It is, thus, apparent that the offending vehicle was indeed being plied without a permit as is required under the provisions of law. It is a settled position of law that use of vehicle in a public place without a permit is a fundamental statutory infraction. It is specifically held by the Hon'ble Supreme Court in ***Amrit Pal Singh and another*** *versus* ***Tata AIG General***

[3] 2016(3) B.L.Jud. 214

***Insurance Co. Ltd. and others***[4] that a situation where a vehicle is being plied in a public place without a permit, cannot be equated with the absence of a license or fake license or a license for different kind of vehicles. In ***Amrit Pal Singh's*** case (supra), the insured had not brought any evidence on record to prove that he had a permit for plying the vehicle. In fact, the stand taken, was of non-involvement of the vehicle in the accident, as is the case in the present appeals. In this situation, it was held by the Hon'ble Supreme Court that the onus to discharge the liability cannot be cast on the insurer. Reference in this regard can also be made gainfully to the judgment of Hon'ble Supreme Court in ***National Insurance Company*** *versus* ***Chella Bharathamma***[5]. In the given facts and circumstances of the case, learned Tribunal has rightly held that there is a fundamental breach of the terms and conditions of the insurance policy.

(11) In so far as the arguments raised by learned counsel for the appellant-driver are concerned, I do not find any merits therein. The judgments relied upon by learned counsel for the appellant-driver do not come to his aid in any manner. In ***Pirthi Singh's*** case (supra), the owner of the offending vehicle had sought to escape liability on the ground that the driver, his employee was carrying the passengers in a truck in contravention of the provisions of Rule 4.60 of the Punjab Movor Vehicles Rules, 1940. A Full Bench of this Court observed that when the driver was acting in the course of his employment, the owner would be vicariously liable. There is no enunciation to the effect that the driver has to be absolved from his liability.

(12) In ***Vijay Laxmi's*** case (supra), it is specifically held in para 7 of the decision that the liability for the payment of amount of compensation would be of the driver as well as of the owner. The owner, it is held, cannot be absolved of his liability to pay the compensation as was sought in the said case. Similar is the situation in the case of ***Divisional Manager National Insurance Company Ltd.*** (supra). Therefore, the learned Tribunal has correctly held the driver and the owner of the offending vehicle to be jointly and severally liable to pay the compensation. It is reiterated at this stage that there is no appeal or any prayer on behalf of the claimants though they are duly represented before this Court.

(13) No other argument has been addressed.

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[4] 2018(3) RCR (Civil) 131
[5] 2004(4) RCR (Civil) 399

(14) Learned counsel for the appellants/petitioners are unable to point out any illegality, perversity or infirmity in the impugned award 16.10.2013, passed by the learned Motor Accidents Claims Tribunal, Palwal, which calls for any interference by this Court at their instance.

(15) All the appeals/revisions i.e. FAO Nos. 5340 to 5342, 9273, 9274 and 8753 of 2014 (O&M) and CR Nos. 4786 of 2014 and 186 of 2015 (O&M) are accordingly dismissed with no order as to cost.

*Tribhuvan Dahiya*