303 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO No. 677 of 2000
Date of decision: 18.11.2015

Paramjit Singh

................Appellant

versus

Om Parkash

................Respondent

Coram: Hon'ble Mr. Justice K.Kannan

Present: Mr. Sidharth Sharma, Advocate for
Mr. Sunil Panwar, Advocate
for the appellant.

Ms. Meenakshi Poswal, Advocate
for respondent No.2.

Mr. D.P.Gupta, Advocate
for respondent No. 3.

Mr. Ranjit Saini, Advocate
for respondents No. 4 and 5.

K.Kannan, J.(Oral)

The appellant who has mulcted with liability is in appeal to contend that he had actually transferred the vehicle at the relevant time of the accident and there was also a valid policy current at that time. Counsel says that he has already made the payment and the issue that would call for consideration is only whether there existed valid policy at that time, even if there was a transfer but registration had not been transferred in favour of respondents No. 4 and 5.

Respondents No. 4 and 5 have been impleaded only before this Court and the matter will have to be examined whether there existed a policy covering the risk for the purchaser. A cover note said to have been issued by the insurer is produced before the Court but the counsel for the insurer is unable to make the verification of the same. Since according to him, all the records have been destroyed.

The insurance company could not have destroyed all the records when there was still a claim which was under adjudication in Court and I hold that the incapacity which the insurance company has beset itself cannot be used to deny the benefit of indemnity if there is otherwise a valid proof of an insurance cover at the relevant time of the accident. The parties ought to have the benefit of such an adjudication before the Motor Accident Vehicles Claim Act itself.

Since the appellant has claimed that he has discharged the liability brought under the award, the adjudication of whether there was a transfer in favour of respondents No. 4 and 5 and whether there was an insurance coverage for the risk of the purchaser, the matter is remitted to the Motor Accidents Claim Tribunal for adjudging the inter-se liability amongst the respondents. The claimants need not be joined in the proceedings for their own claim is said to have been satisfied in part.

If the claim has been satisfied only in part, on a prima facie consideration of production of the insurance cover note, insurance company is directed to pay the balance amount which shall be subject to final adjudication and if the insurance is proved to have been taken by respondents No. 4 and 5, the insurance company will be liable to pay the amount already paid deposited by the appellant. On the other hand, if the insurance is not proved, the insurer will obtain a right of refund from any person who is found to be the owner of the vehicle at the relevant time of the accident. If the transfer in favour of respondents No. 4 and 5 is established, the appellant shall also be entitled to recover the amount paid/deposited before this Court which was permitted to be withdrawn by the claimants with interest @9% against the representatives of the deceased respondents No. 4 and 5. All the recoveries will be done before the Executing Court itself. The claimants shall have a right of recovery in execution against the insurer if the amount is not deposited/paid within a period of four weeks from the date of receipt of copy of this order.

The present appeal is disposed of with above observations.

Parties are directed to appear before the Tribunal on 4.01.2016.

[K.KANNAN]
Judge

18th November, 2015
Shivani Kaushik