

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

FAO No.5605 of 2005 (O&M)

Date of decision: **11**.09.2015

Nasir Ahmed

... Appellant

versus

Sarfudin and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sarfaraj Hussain, Advocate,
for the appellant.

Mr. D.P. Gupta, Advocate,
for respondent No.5.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. This is an inter se dispute between the insured and the insurer. The Motor Accident Claims Tribunal, while awarding compensation to the claimants, directed the compensation amount to be paid by the insurer and also allowed for recoveries against the insured. The justification was that the insured's driver had allowed for passengers to be travelling in a goods vehicle and insured as such. Admittedly, the vehicle, which was involved in a motor accident, was a goods carriage. The claimants had a contention to

make that they had purchased wheat and they were transporting the same in the goods vehicle. Evidently, they wanted to take advantage of the fact that the statute provided for compulsory insurance for claims from passengers travelling along with the goods in terms of Section 147 of the Motor Vehicles Act.

2. The Tribunal rejected the contention of the claimants and held that the case of the claimants that the injured/deceased persons were passengers travelling along with the goods was a fabricated version and that they were actually merely passengers who were unauthorised and who had paid ₹ 50 each to the driver, as admitted by the claimants in the evidence. There were 3 reasons given as to why the contention that they were travelling along with the goods could not be true: (i) They had no reason to go to a village Thokan ka Bas for purchase of wheat and there was nothing particularly shown that it was not available in their respective villages; (ii) Neither the owner nor the driver had been examined to speak about the version that the passengers were actually persons who are owners of the goods travelling along with the goods; and (iii) The persons who claim that they had purchased wheat and they were travelling along with their goods had not examined the person who could have sold the goods. The non-examination of the seller was found to be relevant. The Tribunal, therefore, held that none of the claimants had been travelling with the goods. However, while

granting compensation it provided that the insurance company would still be liable by making reference to the judgement of the Supreme Court in **National Insurance Company Limited Versus Chinnamma and others-2004 (8) SCC 697.**

3. The appeal is filed against the award of the Motor Accident Claims Tribunal by the owner. I have elicited the reasons given by the Tribunal while not availing the right of indemnity to the insured. I do not find any error in its reasoning to render a variation and to make the insurer fully liable and not to provide for right of recovery. The issue is squarely governed by the decision of the Supreme Court in **New India Insurance Company Limited Versus Asha Rani and others-2001(3) PLR 637** that held that there was no requirement of compulsory insurance for persons other than owners of goods travelling along with the vehicle. Consequently, if there was no specific insurance coverage for persons other than owners of goods or when there was no authorisation for any other person other than the driver and the cleaner to occupy the cabin in the goods vehicle, there was no scope for providing the owner of the vehicle right of indemnity.

4. Appeal by the owner is consequently dismissed.

(K.KANNAN)
JUDGE

11.09.2015

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