IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2750 of 2013 (O&M)
Date of decision: 25.08.2015

Ram Khilari and others .... Appellants

versus

Oriental Insurance Company and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rohan Sharma, Advocate,
for Mr. Vikram Singh, Advocate,
for the appellants.

Mr. Banni Thomas, Advocate,
for respondent No.1.

Mr. Pradeep Kumar, Advocate,
for respondent No.3.

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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.

<u>K.Kannan, J</u>. *(Oral)*

1. The appeal is by the owner of the vehicle aggrieved by the liability cast on him and providing for exclusion of liability for the Insurance Company. The accident arose on account of collision between the jeep and a tractor. The jeep driver died. The claimants were the representatives of the jeep driver. The tractor owner was found to be responsible for having parked the vehicle at the middle

of the road and while addressing the issue of liability, the court found that the driver had only a licence to drive scooter, motorcycle, car and jeep valid upto 12.03.2014 commencing from 07.03.2002 and the licence bore an endorsement to drive a tractor also only on 25.10.2010 which was subsequent to the accident on 26.03.2010. The Court observed that the driver did not have a valid driving licence and hence, cast the liability on the insurer.

2. The judgment is erroneous. The nature of licence and the particulars would become relevant only if the driving of the tractor was responsible for the accident. Here was a case where insured tractor with trailer had been parked in the middle of the road where it ought not to have been. It shall only be the details of insurance which will govern the liability and not the particulars of licence in the manner considered by the Supreme Court in ***<u>National Insurance Company Limited Versus Swaran Singh-(2004) 3 SCC 297</u>***. The Supreme Court was directly taking up for consideration of when an Insurance Company would be liable even if the driver did not have a driving licence. The court illustrated that where the driving itself was not the cause for the accident, the insurer would still be liable even for deficient driving licence's particulars. In this case, the parking of the vehicle at a place which ought not to have been parked was alone the cause for the accident and for that the owner would be liable and consequently, the liability will be

funneled to the Insurance Company. The exoneration of liability of the insurer and the denial of indemnity to the owner was unjustified.

3. The award providing for a right of recovery against the insured is set aside and the appeal by the owner is allowed.

(K.KANNAN)
JUDGE

25.08.2015
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