

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

**CM-7368-CII of 2014 in
FAO-1384 of 2014 (O&M)
Date of decision:23.02.2015**

Ashok Kumar and anr. Appellants
Versus

Bikram Singh and anr. Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashok Jindal, Advocate
for the applicants-appellants.

Mr. Vinod Gupta, Advocate
for the respondent.

Jaspal Singh, J.(Oral)

The instant appeal has been preferred by *Ashok Kumar and another*, feeling dissatisfied qua the award dated December 13, 2013, whereby petition preferred under Section 166 of the Motor Vehicle Act, 1988 (for brevity 'Act' only) by Bikram Singh @ Viki was allowed by passing the following order:-

“In view of the findings on the above issues, since to drive goods carriage vehicle fitness certificate is required but in the case in hand said fitness certificate is missing. Resultantly, the present petition is allowed and respondent No.2 is directed to pay compensation amounting to Rs.3,75,000/- with 9% interest from 22.09.2011 till actual realization to the claimant on account of death of Khushi. After making the payment the Insurance Company shall have the right to recover back the same from respondents No.1 and 2 being driver and owner of the vehicle in question”.

The challenge in this appeal preferred by the owner(s) of the offending vehicle is that the recovery rights to the Insurance Company have been wrongly given by the learned Tribunal. The offending vehicle was duly insured with respondent No.2 and there was no violation of any terms and conditions of the policy, no liability can be fastened by learned Tribunal upon the owner(s) or driver.

During the pendency of the appeal, appellants-applicants preferred an application under Order XLI, Rule 27 read with Section 151 of the Code of Civil Procedure seeking permission to produce and prove on record the fitness certificate of the offending vehicle, by way of an additional evidence.

Undoubtedly, additional evidence could be adduced under Order XLI, Rule 27 in one of the three situations, namely:-

- a) Whether the trial Court has illegally refused the evidence, although it ought to have been permitted;
- b) Whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence;
- c) Whether the additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.

Adverting to the facts of the case in hand, the so-called violation of the Insurance Policy is the non-production of fitness

certificate of the offending vehicle on account of which, the recovery rights have been given to the Insurance Company by the learned Tribunal. The said certificate was not available with the present appellants-applicants being attached with the criminal case file, when all other documents i.e. the driving licence, route permit, registration certificate etc. were produced. So, it can be safely inferred that the evidence sought to be adduced by the appellants-applicants was not available with them despite exercise of due diligence. Further production of route permit as an additional evidence is essential in order to enable the Court to pronounce the judgment and to adjudicate upon the matter in issue effectively & judiciously. Thus, application under consideration is allowed.

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In view of the acceptance of the application under Order XLI Rule 27, findings on issue No.2 and the relief granted by the learned Tribunal to the Insurance Company that it shall have the right to recover the amount of compensation awarded to the claimants, from the owner and driver deserves to be set aside and the matter in this regard is required to be dealt with and disposed of afresh by the learned Tribunal.

Accordingly, the relief granted by the learned Tribunal whereby, the rights were given to the Insurance Company to

recover the amount of compensation from the appellants i.e. owner and driver are set aside and the case is remitted to the Court of learned Tribunal, Sangrur to allow the appellants to place and prove on record the fitness certificate of the offending vehicle. Thereafter, an ample opportunity to the Insurance Company be provided to verify its genuineness and validity or to adduce any other evidence to rebut the additional evidence and then to decide afresh who is actually responsible to satisfy the award. The parties through their counsel are directed to appear before the Tribunal, Sangrur on April 9, 2015.

The record be sent to that Court well in time.

February 23, 2015
m. sharma

(JASPAL SINGH)
JUDGE