IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.668 of 2014 (O&M)
Date of Decision:05.11.2015

Shri Ram General Insurance Company Ltd.

….Appellant

Versus

Deen Mohammad and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Respondent No.3 ex parte.

<u>NAVITA SINGH, J.</u>

1. Counsel for the appellant submits that application for bringing on record the legal representatives of respondent No.2 was not filed as their presence is not required. The appeal is filed seeking recovery right from the insured i.e. present respondent No.3 who is already ex parte in this appeal.

2. Therefore, the appeal against respondent No.2 is dismissed.

3. The present appeal is filed by the Insurance Company seeking recovery right from the insured i.e. present respondent No.3. The Motor Accidents Claims Tribunal, Palwal (Tribunal for short) passed an award on 24.4.2013 granting compensation to respondent No.1 herein and fastening the liability on the appellant.

4. Counsel for the appellant contended that the Insurance Company should have been granted recovery right regarding the compensation from the insured because the latter did not produce the route permit and fitness certificate of the offending vehicle despite the fact that a legal notice was sent to the owner for that. If the owner did not produce the relevant documents, adverse inference should have been drawn by the Tribunal against him i.e. respondent No.3 herein. The Tribunal observed in the award that the legal notice Ex.R2 would be not of

much avail because it was not served on respondent No.1. Respondent No.1 was the driver before the Tribunal whereas the legal notice was sent by the Insurance Company to the owner Mehrdin and it was sent through registered post. Copy of postal receipt was also produced in evidence as Ex.R3. The notice, therefore, presumably reached the owner. He did not bother to produce the documents before the Tribunal or to hand those over to the Insurance Company. Adverse inference, therefore, must be drawn against the owner and presumption would be that he did not possess any valid fitness certificate and route permit. If he was holding valid documents, he would have been keen to bring those on record to avoid any liability being saddled on him. It is also important to mention here that even when notice in appeal was sent to respondent No.3 Mehrdin, he did not bother to appear despite service.

5. The appeal is, therefore, allowed and it is held that though the Insurance Company i.e. the appellant is to indemnify the claimant, yet it would have a right to recover the amount in question from the insured i.e. present respondent No.3.

(NAVITA SINGH)
JUDGE

05.11.2015
Ishwar

Whether to be referred to reporter: Yes