IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CR No. 301 of 2013 (O&M)
Date of decision: February 11,2016.

The National Insurance Company Limited
........Petitioner

VS.

Balbir Singh and another
.........Respondents

(2) CR No. 302 of 2013(O&M)

The National Insurance Company Limited
........Petitioner

Vs.

Balbir Singh and another
.........Respondents

(3) CR No. 303 of 2013(O&M)

The National Insurance Company Limited
.......Petitioner

Vs.

Balbir Singh and another
........Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. V.Ramswaroop, Advocate
for the petitioner.

Ms. Mansi Bansal, Advocate
for the respondent No. 2.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

<u>K.KANNAN,J</u> (Oral)

1. All the Civil Revisions are at the instance of the Insurance Company against the order of the executing court that has treated a full satisfaction to be recorded on payment of the principal sums secured under the awards to be paid to the insurer. In all the three cases, the Tribunal had originally granted award with interest at the rate of 9% from the date of filing of the petition till date of payment. The Insurance Company had come in appeal to this court and this court set aside the award of the Tribunal to the extent to which it had cast the liability on the insurer and exonerated the Insurance Company, accepting its plea that the policy of the insurance had been cancelled prior to the accident and that, therefore, the liability cannot be burdened on the insurer. The Insurance Company had even before the order was passed by this Court in 2003 deposited the money comprising of principal and interest in the year 2003 itself. The claimants had also recovered the same. As per the terms of the judgment of this Court, the Insurance Company was entitled to apply for restitution for recovery of the money paid to the claimants, which actually only the owner of the vehicle must have paid. The Tribunal allowed the judgment debtor to deposit the amount that had been paid by the Insurance Company in the year 2003 to constitute a discharge when the amount is paid in the year 2014.

2. The order is clearly erroneous. The right of restitution which Section 144 of the Motor Vehicles Act provides will allow for payment of interest at the same rate at which the Insurance Company bore under the award. Consequently the Insurance Company was entitled to seek for interest at the rate of 9%, as provided in the award, from the date it made deposit till the date when the amount was paid by the judgment debtor. The court will have no power to deny an interest of what

was already provided under the award. Mere payment of the amount by the insurer in the year 2003 cannot go to discharge the liability. The amount has been admittedly paid by the judgment debtor only on 22.08.2012. The court ought to have calculated interest on ₹10,05,411/- at the rate of 9% from the date when the Insurance Company originally deposited the sums.

3. The order already passed is set aside and further process in execution could be pursued by the insurer for recovery of the sum as referred to above.

4. All the Civil Revisions are allowed to the above extent.

FEBRUARY 11, 2016 **(K.KANNAN)**
Rajeev **JUDGE**