202.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1696 of 2000 (O&M)
Date of decision:05.04.2016

United India Insurance Company Limited ... Appellant

versus

Gurmail Kaur and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Neeraj Khanna, Advocate,
for the appellant.

Mr. Aseem Aggarwal, Advocate, and
Mr. S.N. Sharma, Advocate,
for respondent No.5.

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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.

K.Kannan, J. *(Oral)*

1. The appeal by the Insurance Company is on an issue of liability. At the Tribunal, the Insurance Company wanted to contend that the driving licence produced by the driver was not genuine. The copy of the licence was said to have been issued by the DTO office at Buland Shehar (UP) and the court had appointed a Commissioner to collect the evidence from the office concerned. There was report filed by him that the particular licence said to have been issued was not genuine. Though there was positive evidence produced by the

driver or the owner to discredit the value of evidence through the Commissioner's report, the court still allowed for full indemnity to the owner and driver on the ground that the insurer had accommodated own damage claim at the instance of the owner without taking up a plea of the invalidity of the driving licence of the driver. I find the reasoning to be erroneous, for, there cannot be an estoppel against the insurer from showing in an appropriate proceeding brought at the instance of third party that the driving licence was not genuine and if such a plea was proved, the liability of the insurer could be only to the third party and the insurer ought to have been provided with a right of recovery.

2. The counsel appearing on behalf of 5th respondent states that there is a claim for enhancement by the claimants and pending in FAO No.1572 of 2001. I do not think the pendency or otherwise could impact the contention urged by the insurer for determining the inter se liability between the insurer, insured and the driver.

3. The award of the Tribunal in so far as it declines the right of recovery against the owner and driver is set aside. The appeal by the insurer is allowed, the extent of finding the liability by the insurer to satisfy the claim under the award and recover the same against the owner and driver in execution proceedings.

(K.KANNAN)
JUDGE

05.04.2016
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