IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No.749 of 1999 (O&M)
Date of Decision : 06.05.2016

National Insurance Company Ltd. ...... Appellant

versus

Suneel and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. L.M. Suri, Sr. Advocate
with Ms. Rajni Paul, Advocate
for the appellant.

Mr. Sanjeev Sharma, Advocate
for respondents No.1 to 5.

Mr. R.L. Batta, Sr. Advocate
with Mr. J.S. Saggi, Advocate
for respondent No.7.

Mr. Dheeraj Jain, Advocate
for respondent No.8.

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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?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the insurance company against the award dated 25.01.1999 granting compensation of Rs.3,60,000/- alongwith interest @ 12% p.a. and also held the insurance company liable alongwith others to pay the compensation.

Since the dispute is only with regard to the liability of the insurance company detailed reference to facts is not required. The sum and substance of the argument of learned senior counsel for the appellant-insurance company is that the vehicle was owned by the respondent No.7 and at the time of the accident the driver was holding a fake driving licence and therefore the insurance company should have been permitted to recover the amount.

Learned senior counsel for respondent No.7 has argued that at that time the truck was in the permissive possession of respondent No.8 and owner of the respondent No.8 had appeared as RW2 and had testified that while appointing the driver he had taken the trouble to check the licence and take a driving test but he was not able to detect the forgery and therefore the insurance company is liable to pay the compensation. To support his arguments, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Pepsu Road Transport Corporation Vs. National Insurance Company, reported as 2014 AIR (SC) 305.***

Learned senior counsel for the appellant-insurance company has argued that the judgment passed in PRTC's case (supra) would not be applicable because the present not a case where the insured had employed a driver but a third party had appointed him. Therefore, the insurance company would not be bound by the action of the third party.

In my opinion, the learned senior counsel for the appellant is seeking to unduly restrict the contract of insurance and thereby the beneficial provisions of the Act. Once the person incharge of the vehicle is able to satisfy the Court that he had taken reasonable care as mandated by the Hon'ble Supreme Court in the aforementioned case, the insurance company would not be able to avoid its liability.

In the circumstances, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

May 06, 2016
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