405.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.502 of 2004 and
Cross Objection No.30-CII of 2004(O&M)
Date of decision: 02.02.2016

United India Insurance Company ... Appellant

versus

Surinderjit Kaur and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Mohan Gupta, Advocate,
for the appellant.

Mr. K.S. Brar, Advocate,
for respondent No.4.

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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 Insurance Company is in appeal on the issue of liability. They point out that the driver did not have a valid driving licence. The driver stepped into the box and was contending that he did not drive and yet another person was actually driving the vehicle. He admittedly did not have a driving licence. The Tribunal has found that he was actually driving. In such an event, the Tribunal ought to have found that non-production of driving licence

was a proven fact of breach of violation of terms of policy. The Tribunal did not grant the right of recovery for the insurer on a reasoning that the Insurance Company admitted that he had a driving licence. It cannot be a mere act of admission when the driver was actually before court and it was an admitted fact that he did not have a driving licence. The admission of the driver was more crucial than a statement that the insurer could have made to his benefit. As a matter of fact in 3 other cases arising out of the same accident, the Tribunal has found that the driver did not have a driving licence and has allowed for the liability to be fastened on the owner-cum-driver. The counsel for the insurer refers me to the fact that the awards passed holding that the driver did not have a valid driving licence in MACT Nos.15, 16 and 9 of 1998 and the owner-cum-driver ha not preferred any appeal against any of the 3 judgments. The provision for indemnity granted by the Tribunal is erroneous and it is set aside and the appeal by the insurer is allowed to the extent of making the recoveries only against the owner-cum-driver.

2. The appeal is allowed to the above extent.

3. There is no representation on behalf of the claimants in the cross objection. Cross objection is dismissed for default.

(K.KANNAN)
JUDGE

02.02.2016
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