963.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3305 of 2011 (O&M)
Date of decision:17.02.2016

National Insurance Company Limited ... Appellant

versus

Satyavir Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aseem Aggarwal, Advocate,
for the appellant.

Mr. Sanjay Vashisth, Advocate,
for respondent No.1.

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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.

<u>K.Kannan, J.</u> *(Oral)*

1. The Insurance Company is in appeal to challenge the liability cast without minding a defence that there had been no policy of insurance in respect of the offending vehicle. A particular cover note filed in court by the owner referred to a cover note number which was explained by the Manager of the Company that there was no issue of such a cover note and a particular branch referred to as Chandpur (Bijnor) could not be true, for, they have never had a branch office in that place. The cover note was said to have printed at HPC While & CPC Col. Printing/Bhawani

White/11/2003 when according to the insurer all the cover notes were printed during the relevant time only from Maheshwari and sons.

2. The best method of discrediting the insurer was to file the insurance policy itself. No such evidence was offered by the insured. Indeed the owner has not even preferred an appeal against the recovery rights granted to the insurer.

3. When there was no policy of insurance and the cover note cannot be supported as genuine, there was no question of making the insurer liable to pay in the first place. The principle of pay and recover will apply only when there existed a valid policy and there was a violation of terms that would still allow for a third party claimant to proceed against the insurer. If there was not even a policy, the owner and driver alone shall be liable and not the insurer.

4. The award already passed making the insurer liable is set aside and the appeal is allowed. If any portion of the amount has been recovered by any of the claimants, the insurer will press for its recovery only against the owner and driver and not against the claimants. For any portion of unrecovered claim, the claimants will have remedy only against the owner and driver and not against the insurer.

(K.KANNAN)
JUDGE

17.02.2016
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