

208.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1347 of 2012 (O&M)

Date of decision:10.02.2016

Rohtash and others

... Appellants

versus

Oriental Insurance Company Limited and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Duhan, Advocate,
for the appellants.

Mr. Lalit Garg, Advocate,
for respondent No.1.

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 is by the owner and driver who are aggrieved about the right of recovery granted to the insurer. In yet another claim arising out of the same accident and which was prosecuted in MACT No.33 of 2009, it would appear that the Insurance Company had been made liable finding the driving licence to be effective to authorize the driver to drive the insured's vehicle.
2. I have seen through the form of driving licence. The driving licence contains an endorsement to drive a transport vehicle

with effect from 25.10.2007 to 24.10.2010. The Insurance Company appears to have placed an alleged verification certificate through an Investigating Officer that it was not genuine. The plea of violation of terms of policy taken by the Insurance Company would have to be established only by the insurer. The burden of proof of establishing the driving licence filed by the driver to be not genuine is wholly on the insurer. The insurer is bound to summon the original register and elicit through appropriate evidence that the document is not genuine. There has been no such attempt and a mere reliance on an alleged verification cannot be effective to discharge the burden which is heavy on the insurer.

3. It is also admitted by the learned counsel for the insurer that the Insurance Company has even satisfied the claim without making an issue of the invalidity of driving licence for the claim made by Jasbir Kaur in MACT No.33 of 2009. The insurer which is a public sector undertaking cannot take two different lines of defences in two different cases arising out of the same accident.

4. The award stands modified and the appeal is allowed.

5. The amount which is deposited before the court is directed to be refunded to the appellants.

(K.KANNAN)
JUDGE

10.02.2016
sanjeev