

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

**FAO No. 6036 of 2012 (O&M)
Date of decision: 09.02.2016**

New India Insurance Co. Ltd. ... Appellant
versus
Anuradha @ Anuradhika and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Sanamjit Kaur, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant.

None for the respondents.

K.Kannan, J. (ORAL)

The Insurance Company is in appeal to contend that the driver did not produce the route permit inspite of the notice. The Court held that a mere notice to produce a non-production cannot be assessed as discharge of burden to prove. I set aside the finding and hold that an negative proof of what the insured did not possess cannot be done more than calling upon him to produce the document. If the permit was not produced, I have in my mind that the insurer was entitled to plead that the vehicle was being put to use for a purpose other than what could have been normally done. Applying the judgment of the Hon'ble Supreme Court in New India Insurance Vs. Challa Bharathamma, JT 2007 (4) SC 519, I will make possible a right of recovery by the insurer against the insured. This will not in any way relieve the liability of the Insurance Company to satisfy the claimants.

The appeal is allowed in part to provide for right of recovery against the owner and driver after satisfying the award.

**(K.KANNAN)
JUDGE**

09.02.2016

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