

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

**FAO No.6250-2012 (O&M)
in MACT No.104 of 2010**

Date of decision: 26.04.2016

Mohd. Islam Khan

..Appellant

Versus

United India Insurance Co. Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

*1. Whether Reporters of local papers may be allowed to see the
judgement? Yes*

2. To be referred to the Reporters or not? Yes

3. Whether the judgement should be reported in the Digest? Yes

Present: Mr. Ashok K. Sharma, Advocate for the appellant.

Mr. Paul S. Saini, Advocate for respondent No.1.

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JITENDRA CHAUHAN, J.

CM-29614-CII-2012

Prayer in this application filed under Order 41 Rule 27 read with Section 151 CPC is for permission to lead additional evidence by way of placing on record valid permit and road tax receipt.

It is contended that the applicant could not produce the said documents on the record of learned Tribunal as the same were not available at that time. He has placed reliance on '**Ashok Kumar Khemka and another Vs. Oriental Insurance Co. Ltd. and others**',

2014(3) RCR (Civil) 1018, '**National Insurance Co. Ltd. Vs. Rajender Giri and others**', 2012(2) RCR (Civil) 183 and '**United India Insurance Co. Ltd. Vs. Subhash Chander and others**' (P&H) to plead that Section 149(2) of the Motor Vehicles Act 1988 is silent about route permit and as such the findings with regard to grant of recovery rights to the insurance company are liable to be set aside.

On the other hand, learned counsel for respondent No.1 has opposed the prayer made by the appellant and contends that merely by placing these documents on record at this appellate stage would not help the appellant in any manner since the correctness and genuineness of these documents have not been established on record.

Heard.

Under Order 41 Rule 27 (aa) of the Code of Civil Procedure, the additional evidence, at appellate stage, can only be produced, where the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

In this case, the insurance company filed an application for production of driving licence of driver-owner and route permit, but he has failed to bring on record the route permit, and intentionally withheld the same. Only a photostat copy of the driving licence was

brought on record, which spells out that it was valid from 08.08.2008 to 07.08.2011. Lateron, respondent (appellant herein) was proceeded against exparte. The learned Tribunal, while deciding issue No.4 has rightly drawn adverse inference against him and presumed that the route permit was not deliberately produced as the same was not valid route permit. So, it cannot be said, at the appellate stage, that route permit was not within his knowledge or could not be produced after exercise of due diligence. There is no substantial or sufficient cause to allow additional evidence at this appellate stage.

CM No.29614-CII of 2012 is declined.

Main Case

The present appeal has been preferred by the appellant-owner, against the impugned award dated 21.12.2011, passed by learned Motor Accidents Claims Tribunal, Ludhiana ('the Tribunal' for brevity).

The learned counsel for the appellant contends that the learned Tribunal erred in granting recovery rights to the Insurance Company on the ground that the offending vehicle was being plied without route permit at the time of the accident.

On the other hand, the learned counsel for respondent No.1 states that learned Tribunal has rightly given the recovery rights to the Insurance Company.

I have heard learned counsel for the parties and perused the

record.

As discussed above, it emerges that the appellant has not brought on record the route permit to ply the offending vehicle. In these circumstances, it can safely be concluded that at the time of the accident, the offending vehicle did not have any valid route permit and therefore, it is a violation of the terms and conditions of the insurance policy. In the case of '**National Insurance Co. Ltd. Vs. Challa Bharathamma and others**' (2004) 8 SCC 517, Hon'ble the Supreme Court has held as under:-

“A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has permit, but has violated any conditions thereof. Plying of a vehicle without permit is an infraction. Therefore, in terms of Section 149(2), defence is available to the insurer on that aspect.”

In view of the above, I do not find any illegality committed by the learned Tribunal in granting recovery rights to the Insurance Company. Accordingly, the impugned award is upheld and the present appeal is hereby dismissed being devoid of any merit.

The statutory amount, if any, deposited by the appellant be placed at the disposal of the Tribunal for reimbursement.

26.04.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**