215.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1358 of 2013
Date of decision:10.03.2016

Varsha Chawla ... Appellant

versus

National Insurance Company Limited and others .... Respondents

II. <u>FAO No.892 of 2014</u> (O&M)

Ashutosh Singhal ... Appellant

versus

Kuldeep Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sandeep Punchhi, Advocate,
for the appellant in FAO No.1358 of 2013.

Mr. Jitender Dhanda, Advocate,
for the appellant in FAO No.892 of 2014.

Mr. D.R. Bansal, Advocate,
for National Insurance Company.

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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)*

<u>CM No.2771-CII of 2014 in FAO No.892 of 2014</u>

This is an application for condonation of delay of 253 days in filing the appeal.

Notice in the application.

Mr. Sandeep Punchhi, Advocate, takes notice on behalf of respondent No.2 in FAO No.892 of 2014 and also Mr. D.R. Bansal, Advocate, takes notice for respondent No.3.

For the reasons stated in the application, delay of 253 days in filing the appeal is condoned.

Application stands disposed of.

FAO Nos.1358 of 2013 and 892 of 2014

1. Both the appeals are at the instance of the respective owners of two vehicles which were involved in a collision. The appellant in FAO No.1358 of 2013 was the owner of a Tata-Ace that dashed against the claimant's Honda City car when the car was coming from within a car parking area to the main road. In the manner of assessment of negligence, the court found that the claimant was coming from a car parking and he had also admitted that he had to take caution while coming into the main road when he was coming from the parking area. The Tribunal assessed a liability of 50:50 between the claimant and the owner of Tata vehicle.

2. The counsel appearing on behalf of the claimant in FAO No.892 of 2014 points out to me that rough sketch prepared at the spot showed that the Tata vehicle was actually at the right side of the main road and the place of impact showed that if the driver of the Tata vehicle had proceeded along the left side of the road, the

accident would not have taken place. I discard this argument, for, admittedly, the place of accident was a side road that runs parallel to the Delhi main road. The place of accident was opposite the O.P. Jindal Hospital and the place of collision was still outside the enclosed car park. The Tribunal was justified in observing that the person coming from within the enclosed car park was bound to observe the safety precaution of allowing for any vehicle going on the subsidiary road to proceed before coming upon such a road from within the car park area. I accept the finding of the Tribunal as correct and would make no intervention. The appeal by the claimant in FAO No.892 of 2014 is, accordingly, dismissed.

3. The owner of Tata vehicle is in appeal in FAO No.1358 of 2013 to contend that the Tribunal was in error in finding that the vehicle had been put to commercial use and that it constitutes a violation of terms of policy. The copy of the policy has been exhibited as R2 that showed that the vehicle had been insured only as a commercial vehicle and evidently, the order has been passed without looking into the nature of policy. There has been no violation of term regarding the nature of user and the purpose for which the vehicle had been insured. The counsel for the respondent states that there had been yet another violation that the vehicle was authorized to carry only 7+1 but the vehicle was carrying 15 persons at the time of accident. The accident must relate to the violation. It

is nobody's case that the accident took place by virtue of overloading. This cannot constitute a violation of terms of policy for a claim by a third party to the insurer for damage to the vehicle. Indemnity denied to the owner was erroneous. The Insurance Company must have been made liable for the amount assessed as payable by the insurer. The right of recovery granted to the insurer is set aside. The appeal in FAO No.1358 of 2013 is allowed.

4. The amount of ₹25,000/- deposited before the court is ordered to be refunded to the appellant.

(K.KANNAN)
JUDGE

10.03.2016
sanjeev