

216.

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

FAO No.3459 of 2013

Date of decision:12.02.2016

Jyoti Jagga and others

... Appellants

versus

Gobind Gujjar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Tarun Aggarwal, Advocate,
for the appellants.

Mr. Vishal Aggarwal, Advocate, and
Mr. Rajesh Verma, Advocate,
for respondent No.3.

K.Kannan, J. (Oral)

1. The counsel for the appellants says that he is not pressing for enhancement and he is only aggrieved by the fact that the Insurance Company was completely exonerated for alleged violation of the terms of permit. The owner and driver, who have been made liable, have remained ex parte.

2. The violation of the purpose for which permit is issued, is surely a permissible defence, but the Tribunal ought to have, however, applied provision of Section 149(4) and (5) of the Motor Vehicles Act and invoked the decision of the Supreme Court in

New India Assurance Company Versus Kamla-(2001) 4 SCC 342

to provide for a liability against the Insurance Company and liberty given to the insurer for recoveries for violation of terms of conditions of the policy.

3. The award already passed stands modified to allow for right of enforcement of the amount assessed to be recovered from the insurer and the insurer will have a right of recovery against the owner of the vehicle-2nd respondent in appeal.

4. The appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

12.02.2016
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