

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

**FAO No.5339 of 2013 (O&M)  
Decided on: 21.09.2016**

Shri Ram General Insurance Company Limited

....Appellant

Versus

Surender Singh and others

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Krishant Kant, Advocate  
for Mr. T.K. Joshi, Advocate  
for the appellant.

Mr. J.P. Sharma, Advocate  
for respondent No.1.

**REKHA MITTAL, J. (Oral)**

The present appeal has been directed against the award dated 10.01.2013 passed by the Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal') whereby compensation has been awarded in favour of Surender Singh in regard to injuries sustained by him in a motor vehicular accident that occurred on 01.04.2010 due to rash and negligent driving of truck bearing No.HR-61-6058 by Sombir – respondent No.1.

The sole submission made by counsel for the appellant is that as there was no route permit of the truck on the date of accident i.e. 01.04.2010 and the route permit (Ex.R3) produced on record was valid from 04.06.2010 to 03.06.2015, the insurance company is liable to be exonerated of its liability to pay compensation and the award passed by the Tribunal may be modified to this extent.

Counsel for the claimant/respondent has submitted that the

learned Tribunal has rightly held that the insurance company is liable to satisfy claim of the claimant being third party and thereafter, the insurer is at liberty to recover the amount from the owner namely Shamsher Singh – respondent No.2 by relying upon judgment of Hon'ble the Supreme Court of India ***“National Insurance Company vs Chella Bharathamma”***, 2004(4) RCR (Civil) 399.

I have heard counsel for the parties and perused the paperbook particularly the award passed by the learned Tribunal.

The learned Tribunal framed Issue No.5 namely *Whether respondent No.1 was not having valid and effective licence and offending vehicle was being driven in violation of the terms and conditions of the insurance policy at the time of accident? OPR-3.*

The Court decided the question of driving licence in favour of the driver and owner of the vehicle but answered the issue qua permit against the insured with the findings, a relevant extract whereof, reads thus:-

*“.....However, as per perusal of copy of permit Ex.R3, the same was valid from 04.06.2010 to 03.06.2015, whereas the accident in question took place on 01.04.2010. Hence, the offending truck was being driven without any permit on the date of accident in violation of the terms and conditions of insurance policy. In these circumstances, the insurance company is directed to first make payment of the above referred awarded amount along with interest to the claimants being third party and thereafter, the insurance company is at liberty to recover the amount from the insured/owner (respondent No.2). In this regard reliance can also be placed upon judgment National Insurance Company Limited vs Chella*

*Bharathamma and others 2004 ACJ 2094 (S.C.) referred on behalf of insurance company”.*

In the referred authority, the vehicle was plied without permit. Hon'ble the Supreme Court set-aside the findings of the High Court and held that in terms of Section 149(2), defence is available to the insurer on that aspect. However, in para 9 of the judgment, it has been held that considering the beneficial object of the Motor Vehicles Act, 1988, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases, the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

In view of enunciation of law laid down in Chella Bharathamma's case (supra), I do not find any error much less illegality in the findings recorded by the learned Tribunal on Issue No.5.

For the foregoing reasons, the appeal fails and is accordingly dismissed. As the appeal has been decided on merits, application for condonation of delay of 202 days is of academic relevance only.

**21.09.2016**  
*yakub*

**(REKHA MITTAL)**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable:       | Yes/No |