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

**FAO-57-2016 (O&M)
Decided on: 23.08.2016**

Shiv Kumar

.... Appellant

Versus

Tasviri Devi and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jyoti Parshad Sharma, Advocate,
for the appellant.

Mr. S.P. Chahar, Advocate,
for respondents No.1 to 3.

Mr. Rakesh Nehra, Advocate,
for respondent No.4.

Mr. Manoj Makkar, Advocate,
for respondent No.5.

Mr. Saurabh Dalal, Advocate,
for respondent No.6.

Ms. Vandana Malhotra, Advocate,
for respondent No.7.

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Rekha Mittal, J. (Oral)

The present appeal has been directed against the award dated 03.09.2013 passed by the Motor Accident Claims Tribunal, Rohtak (for brevity 'the Tribunal') whereby compensation has been awarded in favour of Tasviri Devi and others in regard to death of Puran Singh @ Puran Chand @ Puran Mal in a motor vehicular accident that occurred on 15.11.2010.

The precise grievance of the appellant is that though the insurance company has been held liable to pay compensation to the claimants but recovery rights have been given against the appellant (driver) and Hari Kisan (owner) of the offending vehicle. It is argued with vehemence that if Hari Kishan (insured) has committed breach of the terms and conditions of insurance policy, the insurer can have a remedy only against the insured and not against the driver as there is no privity of contract between the insurer and driver of the vehicle. It is argued that the learned Tribunal committed a grave error allowing recovery rights to the insurer against the appellant.

Counsel for the insurance company is not in a position to justify findings of the Tribunal giving recovery rights against the driver as well. However, it is prayed that recovery rights against the owner should be affirmed.

I have heard counsel for the parties, perused the paper-book, particularly the award passed by the learned Tribunal.

Be that as it may, it is an admitted position of the case that the appellant has been held liable to pay compensation being driver of the offending vehicle. Hari Kishan, respondent No.2 in the claim petition has been held liable to pay compensation being owner of the offending vehicle HR-46A-5863. Indisputably, the insurance policy was obtained in the name of Hari Kishan, issued by IFFCO-TOKIO General Insurance Company Limited (hereinafter to be referred as insurer). Thus, there is no privity of contract between the appellant and insurer. In absence of privity of contract between the appellant and insurer, there is no question of the appellant being guilty of committing breach of the terms of contract of insurance. In these circumstances, right of the insurer to recover is only against the insured and not against driver of the offending vehicle.

In this view of the matter, the appeal is allowed to the extent that the insurer shall not have any recovery rights against the appellant. For the sake of clarification, recovery rights against the owner shall remain intact.

Dispose of accordingly.

(REKHA MITTAL)
JUDGE

23.08.2016
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No