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

Date of decision:7.9.2016

1. **FAO No.3887 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Surender Kumar and others .....Respondents

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2. **FAO No.3888 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Babu Lal and others .....Respondents

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3. **FAO No.3894 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Surender Kumar and others .....Respondents

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4. **FAO No.3901 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Babu Lal and others .....Respondents

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5. **FAO No.3903 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Santosh Devi and others .....Respondents

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6. **FAO No.3962 of 2016(O&M)**

United India Insurance Co. Ltd. ….Appellant

VERSUS

Pawan and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ram Avtar, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3887,3888, 3894, 3901, 3903 and 3962 of 2016 as common questions of law and fact are involved for adjudication and have emerged out of the same award dated 07.01.2016 passed by the Motor Accident Claims Tribunal, Rewari (in short 'the Tribunal'). For brevity, the facts are taken from FAO No.3887 of 2016.

The present appeal has been preferred by the United India Insurance Co. Ltd. (hereinafter referred to as the Insurance Company) to assail the award primarily on two counts. The first submission made by counsel is that the vehicle in question was being used for hire and in violation of Section 149(2)(a)(i)(a) of the Motor Vehicles Act, 1988 (in short 'the Act') because as per the policy conditions, the vehicle was not permitted to be used for hire or reward. To substantiate his contention, it is argued that in the FIR (Ex.PW1/B) lodged at the instance of Babu Lal, examined as a witness, the vehicle was hired by him on the fateful day.

Another submission made by counsel is that the vehicle had a seating capacity of 7 persons but more than 7 persons were travelling at the time of occurrence, sufficient to exonerate the insurance company of its liability to pay compensation.

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

The Tribunal in para 20 of the award has held that admittedly in the FIR (Ex.PW1/B), it has been mentioned that the offending vehicle was hired by the petitioners on the fateful day but to prove that the offending vehicle was used for commercial purposes, no cogent evidence had been led. Further held that there is not even an iota of evidence on record to prove that offending vehicle was used for commercial purpose as alleged.

As per the settled position in law, First Information Report is not a substantive piece of evidence and the same is a previous statement made by its author and can well be used for the purpose of contradiction or corroboration. Babu Lal appeared in the witness box to prove cause of the claimants. Counsel for the appellant has failed to point out any tangible material elicited in his cross examination to establish that the vehicle was hired by occupants of the car in question. Even it is not clear on record if contents of the FIR (Ex.PW1/B) were put to the witness seeking his explanation in regard thereto. Similarly, no evidence has been produced to prove that any payment was settled much less made to the insured for use of the vehicle in question.

In this view of the matter, I do not find any reason to interfere in the findings of the Tribunal holding that there is no evidence on record that can form the basis to accept plea of the insurer that offending vehicle was being used for commercial purpose.

This brings the Court to the second submission with regard to overloading of the vehicle. Babu Lal (PW1) has categorically deposed that there were 7 persons travelling in the offending vehicle at the time of occurrence. Assuming for the sake of arguments that more than 7 persons were travelling in the vehicle, the overloading itself cannot be termed as a fundamental breach of the terms and conditions of the policy entitling the insurer to escape its liability.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed in limine.

SEPTEMBER 7, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no