IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Date of Decision: 20.11.2017**

FAO No.7 of 2011 (O&M)

National Insurance Company Limited

...Appellant(s)

Versus

Pardeep Kumar and others

...Respondent(s)

2. **FAO No.8 of 2011 (O&M)**

National Insurance Company Limited

...Appellant(s)

Versus

Meena Rani and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Akash Sridhar, Advocate
for the appellant(s).

Mr. Sanjeev Pandit, Advocate for
for respondent No.1 (in FAO No.7 of 2011) and
for respondents No.1 to 4 (in FAO No.8 of 2011).

Mr. R.S. Mamli, Advocate for
Mr. K.B. Sidhu, Advocate
for respondent No.2 (in FAO No.7 of 2011) and
for respondent No.5 (in FAO No.8 of 2011).

ANITA CHAUDHRY, J.

Delay applications

These applications have been filed under Section 5 of Limitation Act seeking condonation of delay of 15 days in filing the appeals.

In view of the reasons mentioned in the applications, same are allowed and delay of 15 days in filing the appeals are condoned.

Main case

These are two appeals filed by the Insurance Company seeking recovery rights as the owner-driver did not have the route permit. Both the appeals arise out of the same accident for which two claim petitions were filed. Separate awards were passed in both the cases on the same day and the issue is common and therefore, I propose to deal with both of them together.

The submission on behalf of the Insurance company is short. It has been urged that there was no route permit and the vehicle is registered in Jammu & Kashmir, while the accident had taken place in Punjab.

Counsel for the Insurance Company submits that the driver had stepped into the witness box and he was asked to produce the permit and he had responded that he had no document and all the documents were submitted to the police. The counsel further submits that the Ahlmad was summoned with the record and it was found that there was no permit and the police had not taken any permit into their custody and even now after getting notice of the appeal the respondents have not produced the route permit and it is a defence which can be raised by the Insurance Company as held in ***'National Insurance Company Ltd. Vs. Challa Bharathamma and others, 2005(1)PLR 102'***. The counsel submits that the Tribunal had chosen to ignore its evidence and had observed that it was the duty of the Insurance Company to lead evidence and they did lead evidence and the finding that there was a presumption that the driving license and route permit is verified by the Insurance Company while insuring vehicle is fallacious.

On the other hand, the submission on behalf of the owner-driver is that the High Court in a number of judgments has held that the Insurance Company would be liable and there would be no violation if the vehicle is found in other place, where it was not authorized to ply. Reliance was placed upon ***'National Insurance Company Limited Vs. Rajender Giri and others, 2012(2) R.C.R. (Civil) 183'*** and ***'Future General Insurance Company Limited Vs. Smt. Surjo Devi and others, 2013(2) R.C.R. (Civil) 564'***.

I have gone through the judgments referred to by the respondents and I am of the view that those authorities were not applicable. There the route permit was issued which were proved but the vehicle was found to be plying in other states.

In the case in hand, there is no route permit and the vehicle was plying without permit which is an infraction and under Section 149(2), a defence is available to the insurer and the Tribunal had erred while placing the liability upon the Insurance Company.

The appeals succeed and the Insurance Company is allowed recovery rights.

Both the appeals are allowed.

November 20, 2017 **(ANITA CHAUDHRY)**
ps-I **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No