IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Date of Decision: 20.11.2017

FAO No.1840 of 2013 (O&M)

United India Insurance Company Limited

...Appellant(s)

Versus

Vikash and others

...Respondent(s)

2. CR No.3243 of 2013 (O&M)

United India Insurance Company Limited

...Petitioner(s)

Versus

Ashok and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Paul S. Saini, Advocate
for the appellant(s) (in FAO-1840-2013) and
for the petitioner(s) (in CR-3243-2013).

Mr. Sumit, Advocate for
Mr. Saurabh Dalal, Advocate
for respondent No.1 (in FAO-1840-2013 & CR-3243-2013).

ANITA CHAUDHRY, J.

These are two cases, an appeal and a revision filed by the Insurance Company disputing the liability placed upon.

The claimants had also filed an appeal seeking enhancement which has been adjourned today on the request of the claimant's counsel.

I propose to take up both the cases together as the issue is common and arise out of the same accident.

Two persons were injured in an accident which occurred on 06.12.2010. The claimants had pleaded that the vehicle was insured. The owner-driver also took the plea that vehicle was insured with United India Insurance Company. The Insurance Company pleaded that the vehicle was not insured and the cover note or the policy had not been produced on record. The Tribunal allowed the claim petitions and placed the liability for payment of compensation upon the Insurance Company policy and in Para 25 of its judgment referred to Ex.R-3 which was stated to be the insurance policy.

The submission on behalf of the Insurance Company is that there was no insurance policy nor any cover note was issued and the Tribunal had wrongly considered the proposal form as a policy. It was urged that it was for the owner-driver to lead evidence to show that any amount was paid or a cover note had been issued. Notice had been issued to the owner-driver but they failed to appear.

The Coordinate Bench had directed the appellants to hold a thorough inquiry and file an affidavit that no policy was issued. The Insurance Company had filed their affidavit that there was no policy and had also directed the Insurance Company to deposit the amount but its withdrawal was not permitted.

The owner-driver were served but they have failed to appear.

The submission on behalf of respondent No.1 is that it is a dispute between the owner-driver and the Insurance Company.

The Tribunal had relied upon the document (Ex.R-3) and a perusal thereto, it can be seen that it is a proposal form and not a cover note or a policy. The Tribunal had erred while placing the liability on the Insurance Company. The finding has to be set aside. It is held that since the vehicle was not insured, therefore, they were not liable to pay the amount. The amount deposited by them of Insurance Company can be withdrawn by them.

Both the appeal and the revision filed by the Insurance Company are allowed.

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

Whether Reasoned/Speaking **Yes/No**
Whether Reportable **Yes/No**