

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

FAO No.5535 of 2017 (O&M)

Date of Decision: 28.08.2017

Oriental Insurance Company Limited

.....Appellant

Vs.

Jagir Kaur and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Vandana Malhotra, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.17942-CII of 2017

For the reasons stated in the application, delay of 12 days in refiling the appeal is condoned.

Application stands disposed of.

Main Case

The appellant/Insurance Company has come in appeal against the Award of the learned Tribunal dated 22.03.2017 whereby, compensation of Rs.05,04,810/- has been awarded to the claimants.

The Insurance Company has challenged the Award mainly on the two grounds. The first ground is that accident took place on 22.12.2015 and on this date fitness certificate of the truck which was to be issued by the Regional Transport Authority, Bhiwani, was not available with the driver. This aspect has been considered in para-40 of the Award that respondent No.3 had examined Rajesh Kumar, Clerk, Office of Regional Transport Authority, Bhiwani as RW1 who had testified that as per record fitness certificate of vehicle bearing registration No.HR-61A-3522 was issued w.e.f.

25.06.2014 to 24.06.2015 and then from 29.06.2016 to 28.06.2017. He had further testified that during the intervening period the said vehicle was not issued any fitness certificate. This aspect had rightly been considered in favour of appellant that grant of fitness certificate for the subsequent period by itself implies fitness of the truck in question for the earlier period i.e. on the date of accident. Moreover, in the present case the accident took place due to negligent parking of the truck in question for loading of potatoes by the respondent No.1 and not due to being unfit for driving and due to mechanical defect occurring during driving of the truck. Even though plying of the truck in question without fitness certificate involves breach of the provisions of the Motor vehicles Act, 1988 and rules framed thereunder but in the absence of the fitness certificate does not constitute fundamental breach of the terms and conditions of the insurance policy and was not a defence available to the insurance company. Therefore, insurance company was not exonerated from its liability to pay compensation to the claimants.

The another grounds taken by the counsel for the respondent-insurance company is that multiplier had wrongly been adopted. She further submits that multiplier of 7 was applicable instead of 15. Moreover, the respondent No.2 who was the brother of the deceased was not dependent upon the deceased and no evidence had been led by the respondent Nos.1 and 2 that respondent No.2 was dependent upon the deceased. This aspect has been rightly considered in para-29 of the Award by making a reference to the judgment in the case of **Reshma Kumari and others Vs. Madan Mohan and another (2013-2) 170** and **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298 SCC**, the multiplier

was 38 years old.

So in the light of the discussion, the orders of learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

28.08.2017
anil

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>

