

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

**(1) FAO No.6502 of 2017 (O&M)
 Date of Order:26th October, 2017**

National Insurance Company Ltd.

...Appellant

Versus

Amarjit Kaur and others

..Respondents

(2) FAO No.6503 of 2017(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Dara Singh and others

..Respondents

(3) FAO No.6504 of 2017(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Barinder Kaur and others

..Respondents

(4) FAO No.6505 of 2017(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Rampal Singh and others

..Respondents

(5) FAO No.6639 of 2017(O&M)

National Insurance Company Ltd.

...Appellant

Versus

Rampal Singh and others

..Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. R.C.Kapoor, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

C.M.No.20857-CII -2017

C.M.No.20859-CII -2017

C.M.No.20861-CII -2017

C.M.No.20865-CII -2017 &

C.M.No.21562-CII -2017

Prayer in these applications is for condonation of delay of 68 and 84 days in filing the appeals.

For the reasons mentioned in these applications, which are supported by an affidavits, the same are allowed and the delay of 68 and 84 days in filing the appeals is condoned.

MAIN CASE

By this common judgment, the above referred appeals are being disposed of as all the appeals arise out of a common award passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as , 'the Tribunal').

In a motor vehicular accident, involving a Tata Ace and a Truck (tipper), five persons had lost their lives, namely Harjinder Singh aged 45 years, Rajinder Kaur aged 34 years, Paramjit Kaur aged 43 years, Mandeep Kaur aged 13 years and Nasib Kaur aged 62 years.

Learned Tribunal had awarded compensation after finding that the driver of the truck, the offending vehicle, was rash and negligent in driving the vehicle. The appellant-Insurance Company (insurer of the vehicle-the offending vehicle) has been held liable to pay the compensation.

Learned counsel for the appellant-Insurance Company has

submitted as under:-

- (i) It was a case of composite negligence/contributory negligence as the ill fated vehicle, namely, Tata Ace was coming from a link road;
- (ii) The vehicle, namely, Tata Ace was not having any permit/route permit and, therefore, the vehicle was being driven in violation of policy conditions.

It may be significant to mention here that respondents before the learned Tribunal including the Insurance Company did not produce any evidence. A reading of the award would show that the respondents before the learned Tribunal did not contest the claim petitions on ground no.(i) being put forth before this Court.

As noticed above, in the absence of any pleadings, issue or evidence, the Insurance Company cannot be permitted to raise an argument for the first time in this Court.

With respect to second argument, it is sufficient to note that the Insurance Company raised this argument before the learned Tribunal. However, the Court after discussing in detail the facts available on the file, rejected the same.

None of the parties have produced on the file the permit/route permit. It was the duty of the Insurance Company to summon the route permit from the concerned party or the authority and prove it in accordance with law. The Insurance Company was further required to prove that the vehicle was being plied without a route permit and, therefore, vehicle was being used in violation of terms and conditions of the policy. In the absence of any such evidence to this effect, this Court is unable to appreciate the

arguments of learned counsel for the appellant.

For the reasons recorded above, all the appeals filed by the Insurance Company are dismissed while upholding the award passed by the learned Motor Accident Claims Tribunal, Rupnagar.

26th October, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO