

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

Date of decision: 20.11.2018

1.

FAO No. 8403 of 2014(O&M)

Salim and another

.....Appellants

VERSUS

Oriental Insurance Co. Ltd. and another

.....Respondents

2.

FAO No. 8404 of 2014(O&M)

Salim and another

.....Appellants

VERSUS

Oriental Insurance Co. Ltd. and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Atul Yadav, Advocate for the appellants.

Mr. Eklavya Darshi, Advocate for respondent No.1.

None for respondent No.2.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8403 and 8404 of 2014 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.8403 of 2014.

The driver and owner of offending vehicle i.e. container bearing No.RJ-32G-0859 are in appeal on the limited question of insured being guilty of plying the vehicle without a permit and entitling the

insurance company to recover the amount from the owner after payment of compensation to the claimants.

The appellants filed application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for permission to place on record documents (Annexure A-1 to A-5) by way of additional evidence. Insurance company/respondent No.1 was directed to verify the tourist permit/national permit (Annexure A-1) sought to be produced on record by way of additional evidence. Counsel for the insurance company would fairly inform that on necessary verification, the permit has been found to be valid and in force on the date of occurrence. Since the vehicle was being plied on public road with a valid permit on the day of occurrence, findings recorded by the Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal') that the insured is guilty of violating the policy constituting a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 cannot be allowed to sustain and accordingly set aside. As a natural corollary, right of recovery given to the insurance company against the insured after payment of compensation to the claimant(s) is liable to be set aside. Accordingly, findings of the Tribunal under the head 'responsibility to pay compensation' are modified to the effect that all the respondents before the Tribunal shall be jointly and severally liable to pay compensation to the claimant(s).

For the foregoing reasons, the appeals are partly allowed in the aforesaid terms.

NOVEMBER 20, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no