

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

FAO No.3692 of 2018 (O&M)
Date of Decision : 18.12.2018

Mahesh Yadav

...Appellant

versus

Parmod and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Chanderhas Yadav, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent No.3.

B.S.WALIA, J. (Oral)

1. Learned counsel for the appellant contended that the appeal is liable to be allowed, award modified on the short ground that the learned Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') had failed to take into account the availability of fitness certificate of the offending vehicle. Learned counsel contends that the Tribunal wrongly observed in paragraph No.22 of the impugned award on the basis of the plea of counsel for respondent No.3 that the insurance company was not liable to pay compensation as the offending vehicle was being plied in contravention of insurance policy, as the offending vehicle was not carrying a valid fitness certificate. Learned counsel contends that in fact a perusal of the record reveals that a valid fitness certificate was possessed in respect of the offending vehicle and the same was exhibited as R-5, therefore, the finding in paragraph No.22 of the impugned award

granting recovery rights to respondent No.3 to recover the compensation from respondent Nos.2 and 3 i.e. owner and driver of the offending vehicle, is liable to be modified and the insurance company held responsible to make payment of compensation without any recovery rights.

3. The aforementioned factual position has not been disputed by learned counsel for respondent No.3.

4. I have heard learned counsel for the parties.

5. Once it stands established that the finding of the learned Tribunal that there was no fitness certificate is factually incorrect in as much as the fitness certificate stands exhibited as R-5 and the same is stated by learned counsel for the respondent/Insurance company to have been verified to be valid, then in that situation the impugned finding given in paragraph No.22 of the award is legally unsustainable. Accordingly, the award is modified by holding respondent No.3 liable to make payment of compensation without any corresponding right to recover the same from respondent Nos.2 and 3 i.e. owner and driver of the offending vehicle.

6. Appeal allowed by modifying award dated 24.01.2018, to the extent as noted above.

(B.S.WALIA)
JUDGE

18.12.2018

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No