

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

225

FAO-3985-2016 (O&M)

Date of decision: 06.05.2019

BASHIR AHMAD MULLA

... Appellant

Versus

SAVITA AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Zorawar Singh, Advocate for the appellant.
Mr. Sanjeev Banga, Advocate for respondents No.1 and 2.
Mr. VK Garg, Advocate for respondent No.5.

REKHA MITTAL, J. (Oral)

The owner/insured of offending vehicle namely truck No.JK-05-A-2548 is in appeal to assail findings of the Tribunal giving right of recovery in favour of the insurance company on the ground of non-possessing of fitness certificate on the date of accident.

Order of notice of motion dated 15.07.2016, reads as follows:-

“Counsel for the appellant inter alia contends that the appellant has filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for placing on record the fitness certificate (Annexure A1). It is further argued that assuming that there was no fitness certificate in regard to the vehicle in question on the date of accident, the insurance company cannot be exonerated of its liability to indemnify the owner. The learned Tribunal without adverting to the provisions of Section 149 of the Motor Vehicles Act, 1988 has allowed the recovery rights to the insurer. In support of his contention, he has relied upon a Full Bench decision of the Kerala High Court **TV Augustine VS. Ayyappan Kutty @ Mani and others, 2015(3) RCR (Civil) 638.**

xx xx”

Counsel for the insurance company is not in a position to support findings of the Tribunal giving right of recovery to the insurer on the ground of non-possessing of fitness certificate when examined in the light of defences available to the insurer under Section 149(2) of the Motor

Vehicles Act, 1988. That being so, findings of the Tribunal recorded in para 15 of the award cannot be allowed to sustain and are accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

06.05.2019

(REKHA MITTAL)

ashok

JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No