

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

**Date of decision: 28.05.2019**

**FAO No.1817 of 2017 (O&M)**

Sheela Gupta ... Appellant

Versus

Subash and others ... Respondents

**FAO No.1819 of 2017 (O&M)**

Sheela Gupta ... Appellant

Versus

Ravi Kumar and others ... Respondents

**FAO No.4582 of 2017 (O&M)**

Sheela Gupta ... Appellant

Versus

Smt. Phulwati (deceased) thr her LRs and others ... Respondents

**FAO No.6769 of 2017 (O&M)**

Sahil Kumar @ Shail Kumar Gupta ... Appellant

Versus

Mahender and others ... Respondents

**FAO No.2907 of 2017 (O&M)**

Sahal Kumar @ Shail Kumar Gupta ... Appellant

Versus

Maha Devi @ Madal and others ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Ashok Jindal, Advocate  
for the appellant.

Mr. Ashwani Talwar, Advocate and  
Ms. Priya Deep, Advocate  
for the insurance company.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.1817, 1819, 4582, 6769, 2907 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.1817 of 2017.

**CM No.6074-CII of 2017 in FAO No.1817 of 2017**

Heard.

Allowed as prayed for. Delay of 191 days in filing the appeal stands condoned.

**FAO No.1817 of 2017 and other connected cases**

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Tribunal only on the question of driving licence on the basis whereof insurance company has been given right of recovery after payment of compensation to the claimants. It is argued that the appellant has filed an application under Order 41 Rule 27 read with Section 151 CPC seeking permission to place on record certificate of 'Safe Transportation of Hazardous goods' Annexure A2 by way of additional evidence. It is further argued that even if there is no

endorsement on the driving licence authorising the driver to drive a vehicle carrying inflammable/hazardous good, the insurance company cannot be heard to say that the insured is guilty of breaching terms and conditions of policy constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is prayed that findings recorded by the Tribunal in paras 29 and 30 of the award may be set aside and the insurance company should be held liable to pay compensation without any right of recovery.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal with the submission that as licence possessed by the driver did not have an endorsement authorising him to drive a vehicle carrying inflammable/hazardous goods in compliance with the provisions of Section 14(2) of the Act, insured is guilty of violating the terms and conditions of insurance policy entitling the insurer to press for right of recovery against the insured.

Be that as it may, it is undisputed position of the case that the vehicle involved in the occurrence is oil tanker bearing No.-HR-46C-1144. The Tribunal allowed right of recovery primarily on the ground that licence possessed by the driver did not contain an endorsement authorising him to drive vehicle carrying inflammable/hazardous goods. The controversy raised in the present appeal is squarely covered against the insurance company by judgment passed by this Court **National Insurance Co. Ltd. VS. Harbans Kaur and others, along with connected case, FAO**

**No.1210 of 2014, decided on 26.03.2018.** In this view of the matter, findings of the Tribunal recorded in paras 29 and 30 of the award cannot be allowed to sustain and accordingly set aside. As a natural corollary, insurance company shall be liable to pay compensation by way of indemnification of the insured in discharge of contractual obligation created under the policy, without any right of recovery.

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

28.05.2019  
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**(REKHA MITTAL)**  
**JUDGE**

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|----------------------------|----------|
| Whether speaking/reasoned: | Yes / No |
| Whether reportable:        | Yes / No |