IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.05.2019

FAO No.2951 of 2017 (O&M)

Mangat Singh and another ... Appellants

Versus

Oriental Insurance Co. Ltd. and others ... Respondents

FAO No.2952 of 2017 (O&M)

Mangat Singh and another ... Appellants

Versus

Oriental Insurance Co. Ltd. and others ... Respondents

FAO No.2953 of 2017 (O&M)

Mangat Singh and another ... Appellants

Versus

Oriental Insurance Co. Ltd. and another ... Respondents

FAO No.2954 of 2017 (O&M)

Mangat Singh and another ... Appellants

Versus

Oriental Insurance Co. Ltd. and another ... Respondents

FAO No.2955 of 2017 (O&M)

Mangat Singh and another ... Appellants

Versus

Oriental Insurance Co. Ltd. and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. CM Munjal, Advocate for the appellants.
Mr. DP Gupta, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2951 to 2955 of 2017 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.2951 of 2017.

The sole submission made by counsel for the appellants is that the insurance company has wrongly been given right of recovery against the insured by recording findings with regard to offending mini bus did not have route permit at the time of accident. It is argued that the insurance company neither raised a specific plea with regard to the insured not possessing a permit or route permit nor the Tribunal framed any such issue with an opportunity to the appellants to produce the relevant document for necessary verification by the insurance company, therefore, findings of the Tribunal with regard to violation of terms and conditions of the policy constituting defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act') are liable to be set aside and the insurance company should be held liable to pay compensation to the claimants by way of indemnification of the insured, in discharge of its obligation under the contract of insurance.

Counsel for the insurance company, on the contrary, would argue that a plea was raised by the insurance company that the insured is guilty of violating the provisions of Section 149(2) of the Act that also deals with question of permit.

Counsel for the parties are *ad idem* that findings of the

Tribunal recorded in para 16 of the award may be set aside and the matter be remitted to the Tribunal for deciding the question of permit as well as route permit by framing a specific issue in this regard and thereafter providing opportunity to the insured and insurance company to lead evidence in support of their respective contentions in this regard.

In view of the above, the appeals are partly allowed; findings of the Tribunal recorded in para 16 of the award are set aside and the matter is remitted to the Tribunal for deciding, if the vehicle in question had a valid permit and route permit on the day of occurrence, if not so, to what effect. Parties through their counsel are directed to appear before the Tribunal on 26.05.2019. It is clarified that the Tribunal need not to hear the claimants for deciding the aforesaid question as the dispute is *inter se* the insured and insurer only. As the appeals have been decided on merits, applications for condonation of delay are of academic relevance.

08.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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