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

F.A.O No. 647 of 2018
Date of decision:- 27.11.2019

Avtar Singh ...Appellant

Versus

National Insurance Co Ltd and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. S.K. Gupta, for the appellant

Mr. Rajiv Sharma, Advocate
for the Insurance Co.

RITU BAHRI J. (Oral)

1. The present appeal is against award dated 21.04.2017 passed by the learned Motor Accident Claims Tribunal, Karnal whereby the claimants were granted compensation to the tune of Rs.3,77,000/- by giving recovery rights to the Insurance Company against the present appellant.

2. Both the parties are not in dispute with regard to the factum of accident which took place on 09.03.2013 when respondent No. 3 Karamveer along with Vikram Singh, Ram Dhari, Parveen Kumar, Gogi and Dayaram left karnal for Shivpuri, Madhya Pradesh on their vehicle i.e Harvester (wheat cutting machine) bearing No. HR-05T-7329. The vehicle was driven by Ram Dhari. When they reached near River Bridge, District Shivpuri, in the meantime, the offending vehicle driven by respondent No. 1 in a rash and negligent manner came from opposite side and struck against the harvester. The petitioner received multiple injuries including grievous one. F.I.R No. 31/2013 dated 09.03.2013 under Sections 279/337 I.P.C was registered in this regard against respondent No. 1

3. Learned counsel for the appellant is relying upon judgment of Karnataka High Court in a case of ***Oriental Insurance Co. Ltd vs. Mahaboob Ali Khan 2017 AAC 683*** to contend that as per Section 149 (2) of Motor Vehicles Act, 1988, the insurance Company cannot be absolved of its liability on the ground that vehicle was not having fitness certificate.

4. On the other hand, learned counsel for the Insurance Company is relying upon judgment of Hon'ble the Supreme Court of India in a case of **United India Insurance Company Limited Vs. Shila Datta and others 2012(1) RCR (Civil) 582,** where Hon'ble Supreme Court was considering Section 170 of the Motor Vehicles Act by which the Tribunal during inquiry can suo moto issue notice to the insurer for the reasons to be recorded in writing directing the insurer to be made a party to the proceedings. The claim proceedings can be initiated even suo moto by Tribunal by treating report of the accident sent to it by the police. The suo moto power can be exercised if during inquiry the Tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, a direction can be given to the insurer to take all the pleas under Section 149(2) of the Motor Vehicles Act or any other grounds that are available to the driver/owner.

5. After hearing learned counsel for the parties, the present appeal deserves to be allowed.

6. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company v. Swaran Singh, 2004(2) RCR Civil 114*** wherein the Hon'ble Supreme Court has laid down that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if

it wishes to avoid liability. In the summary of defences in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:-

> *(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in**sub-section (2)(a)(ii) of section 149,** have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*
>
> *(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish `breach' on the part of the owner of the vehice; the burden of proof wherefor would be on them.*

7. Reference at this stage can further be made to a judgment of this Court in a case of ***M/s Sapna Transport and Contractor vs. National Insurance Co. Ltd and others, 2018 (4) Law Herald 3444***, wherein it has been held that non-possessing of route permit or fitness certificate is not a plea in defence available to the Insurance Company either to escape liability

to pay compensation or assert its right to recover the same from the insured after payment of compensation to the claimants. There is nothing on record to show that the Insurance Company ever raised an issue before the Tribunal that the vehicle was being plied on public road without route permit.

8. The judgment in ***Sri Mahaboob Ali Khan's case (supra)*** is directly applicable to the facts of the present case wherein in para 12, it has been observed as under:-

12. The occurrence of the accident due to actionable negligence on the part of the driver of the offending lorry on 19.6.008 and also injury sustained by the claimant are not in dispute. The dispute is with regard to the quantum of compensation and liability of the Insurance Company to compensate the claimant. In the accident the claimant has lost the left leg above the knee. The counsel appearing for the Insurance Company submits that as on the date of accident though there is coverage of Insurance Policy from 5.2.2008 to 4.2.2009, the offending vehicle was not having the fitness certificate. Unless the vehicle possess the fitness certificate, it cannot be brought on public road. Hence, the Insurance Company is not liable to compensate the claimant. Whereas the claimant contended that such a defence is not available under Section 149(2) of the Motor Vehicle Act. However, the fitness certificate is not one of the conditions of the Insurance policy. Hence, the Insurance company cannot take such a defence,. I find some substance in the contention of the claimant. In the Insurance policy no such condition is imposed. This Hon'ble Court in an unreported decision in MFA No.9625/2008 disposed of on 24.8.2012 at para 13 has held as under:

> *"What is relevant to be noted here is, if the contention of the insurer that the fitness certificate of the offending vehicle is valid from 20-3-2002 to 19-03-2003 as stated in Ex.R.3-letter addressed by the Investigator to Insurance Co. were to be true, they could not have issued the Insurance Policy - Ex.R.1 on 17-12-2006 valid from 26-12-2005 upto 25-12-2006. Non-possessing of fitness certificate by the owner of offending vehicle as on the date of accident is not one of the grounds on which the insurer can defend their action and oppose saddling of liability against them and it is not the defence under which they can claim exemption from liability. Even in the Insurance Policy - Ex.R.1 issued by the insurer in favour of the offending vehicle possessing fitness certificate is not one of the conditions of breach of policy."*

9. Applying the ratio of the above judgment to the facts of the present case, the present appeal deserves to be allowed, as the Tribunal has granted recovery rights to the Insurance Company against the appellant on the ground that fitness certificate produced by him was not entered into the register of the transport authority. But it was nowhere observed that this certificate is fake one. And even as per above judgment, the fitness certificate is not one of the conditions of the policy.

10. The present appeal is allowed and the award dated 21.04.2017 is modified to the extent that the appellant is not liable to pay compensation to the claimants and the Insurance Company is liable to make the payment of entire compensation to the claimants.

11. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal in the Registry of this Court be returned to him.

27.11.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned	***Yes***
Whether reportable	***No***