

CM No. 25245-25246-CII of 2015 in/and
RA-CR- 280-CII of 2015 in FAO- 4538 of 2012

PARAMJIT KAUR SAINI
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In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 16.12.2019

CM No. 25245-25246-CII of 2015 in/and
RA-CR- 280-CII of 2015 in FAO- 4538 of 2012

New India Assurance Company Limited

---Appellant

vs.

Bholi Devi and others

---Respondents

CM No. 25274-25275-CII of 2015 in/and
RA-CR- 281-CII of 2015 in FAO- 4539 of 2012

New India Assurance Company Limited

---Appellant

vs.

Kashmir Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munish Gupta, Advocate
for applicant-respondent No. 4 in RA-CR- CII- 280-2015
for applicant-respondent No. 2 in RA-CR- CII- 281-2015

Mr. Vipul Sharma, Advocate,
for the non-applicant-appellant insurance company

Rekha Mittal, J.

CM No. 25246-CII of 2015 in FAO- 4538 of 2012

Prayer in this application is for condoning delay of 577 days in

filing the review application.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 577 days in filing the review application stands condoned.

Disposed of accordingly.

Main case(s)

This order will dispose of RA-CR- 280-CII of 2015 in FAO- 4538 of 2012 and RA-CR- 281-CII of 2015 in FAO- 4539 of 2012, as identical questions of law and fact are involved for adjudication.

Counsel for applicant-respondent No. 4 would argue that even if Special Leave Petition to Appeal against the judgment dated 19.3.2014 filed at the behest of Smt. Rekha Gupta, owner of the alleged offending vehicle Tata 407 bearing No. HP- 29-2675 has been dismissed in limine, review petition is maintainable before this Court. For this purpose, reliance has been placed on judgment of Hon'ble the Supreme Court **Khoday Distilleries Limited (Now Known as Khoday India Limited) and others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator 2019 (2) RCR (civil) 576**. It is further argued that while allowing appeal filed by the insurance company, right of recovery has wrongly been given in favour of the insurance company and against the applicant-driver of the offending vehicle.

Counsel representing the insurance company, on the contrary, has supported the judgment passed by this Court against which application for review has been filed by driver of the vehicle.

I have heard counsel for the parties and perused the paper book.

Counsel for the insurance company has not cited a judgment contrary to what has been held by Hon'ble the Supreme Court in **Khoday Distilleries Limited (Now Known as Khoday India Limited) and others' case (supra)** that review petition is maintainable before the High Court even if the Special Leave Petition to Appeal filed against order passed by the High Court has been dismissed either by non-speaking order or a speaking one as in either case, doctrine of merger is not attracted.

As per the settled position in law, there is no privity of contract between the insurer and driver of the vehicle in case he is not the owner/insured of offending vehicle. In absence of privity of contract between the driver and insurer, question of driver having violated the terms and conditions of policy constituting defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 does not arise. That being so, findings of this Court giving right of recovery to the insurance company against driver of the vehicle are incorrect on the face of it and the same can be set aside in exercise of jurisdiction under Order 47 read with Section 114 of the Code of Civil Procedure and ordered accordingly.

As a result, the insurance company shall not have any right of recovery against the applicant-driver of the offending vehicle.

Disposed of accordingly.

(Rekha Mittal)
Judge

16.12.2019.

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No