IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3639-2010 (O&M)
Date of Decision: December 11, 2025

Oriental Insurance Company Ltd.

...Appellant

VERSUS

Smt.Khurshidan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjiv Pabbi, Advocate
for the appellant.

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ARCHANA PURI, J.

Learned counsel for the appellant-insurance company has filed the photocopies of the documents, which were available with him. However, he submits that he does not possess any other document, relating to the pleadings and the evidence adduced, before the Tribunal.

In the given circumstances, it is only on the basis of the documents produced before the Court, he submits that the present appeal be heard.

Counsel for the appellant heard.

As evident from the impugned Award, a motor vehicular accident had taken place on 23.02.2007, in which Rahis, who was 22 years old, had died, on account of injuries sustained in the accident in question. FIR No.58 dated 23.03.2007 under Sections 279, 337 and 304A IPC was registered at police station Tauru.

Reply to the claim petition was filed and issues were framed. The evidence was led by both the sides. On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, due to rash and negligent driving of dumper bearing registration No.GJ-10V-6147, driven by respondent-Vadan Singh and the same resulted into death of Rahis.

Thereupon, while considering the affidavit of Smt.Khurshidan, who stepped into witness box as PW-2 and other evidence brought on record, learned Tribunal had awarded compensation to the extent of Rs.5,24,600/- and the liability fastened upon the driver, owner and insurer was joint and several.

Being aggrieved, the insurance company has filed the present appeal.

In fact, counsel for the appellant, while making reference to the grounds of appeal submitted that owner and driver, were proceeded against ex-parte and the insurance company had deposited the diet money for the summoning of the owner and the service could not be effected, despite the best efforts. Learned Tribunal did not grant any further opportunity to lead the evidence and thus, the evidence was closed by order. Counsel for the appellant now submits that the learned Tribunal should have adopted coercive measures to ensure the effecting of service upon the owner of the offending vehicle and in these circumstances, in the absence of route permit, the insurance company, as such, could not be made liable.

In view of the aforesaid submissions, it is pertinent to mention that but for the photostat copies of the documents, produced on record by learned counsel for the appellant, there is no other record available, with regard to the pleadings filed before the Tribunal and the evidence adduced. From the impugned Award, it is evident that reply was filed, at the instance of the insurance company, wherein, plea was taken about the dumper in question to be driven in utter violation of terms and conditions of the insurance policy and specific issue was also framed, with regard to the same i.e. issue No.3, which reads as herein given:-

> *"3. Whether respondent no.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy?OPR(3)"*

However, from the impugned Award, it is evident that the onus to prove this issue was on respondent No.3 i.e. the insurance company but no evidence was led to prove this issue, nor the same was argued by counsel for the insurance company, during the course of arguments. Consequently, the said issue was decided against the insurance company. Such being the position, now it does not lie in the mouth of counsel for the appellant to submit that no proper opportunity was given to the insurance company to lead evidence.

In fact, though it is submitted that list of witnesses was filed and diet money was deposited and summons were issued for effecting service of owner of the offending vehicle, but however, unfortunately, on account of record having destroyed in the fire incident, which took place in the High Court premises, no record, as such, is available with this Court, to make appraisal of the submission aforesaid made by counsel for the appellant.

In the given circumstances, more particularly, considering the observations made by learned Tribunal on issue No.3, seemingly, no such process for examination of the witness, as such, has been initiated, at the instance of the insurance company. Even if it be so taken, then also, as per the version of the appellant only, the evidence was closed by order. However, no such order of closure of the evidence was challenged by the appellant.

Under such constrained circumstances, no conclusion can be drawn, with regard to the dumper being plied without route permit and precisely on this account, no recovery rights can be granted to the insurance company.

Hence, the appeal sans merit and the same is hereby dismissed.

December 11, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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