



RSA-537-1998 (O&M)

[204] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-537-1998 (O&M)
Date of Decision : 25.03.2025

Oriental Insurance Company
Limited and another ...Appellants

versus

Transport of India Limited ...Respondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Vinod Chaudhari, Advocate
for appellant No.1-Insurance Company.

None for appellant No.2.

Mr. Maninder Arora, Advocate with
Mr. Harmeet Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

[1] Plaintiff are in regular second appeal, aggrieved of judgment and decree dated 29.09.1997 passed by the District Judge, Chandigarh, whereby suit filed by the plaintiffs has been ordered to be dismissed holding that the same has been filed by an incompetent person, reversing findings recorded by the Court of the first instance on Issue No.3.

[2] Plaintiffs filed a suit for recovery.

[3] Suit was preferred through one S.M. Chadha on the strength of Power of Attorney (Exhibit P-5) and letter of subrogation (Exhibit P-6). Documents have been executed on behalf of plaintiff by one Ram Chand. He was serving as an Accounts Officer.



[4] Defendants raised objection with respect to the competence of Ram Chand to sign Power of Attorney and letter of subrogation. Admittedly, no document was brought on record that could vest Ram Chand with the power to sign Power of Attorney. Lower Appellate Court in these circumstances, observed as under:-

"11. The basis of the first argument which has been raised before me, was led out at the time when the Power of Attorney and letter of subrogation Ex.P5 and P6 were produced before the trial Court. The exhibition of these documents were objected to on 24.8.1987 at the time when PW2 Ram Chand appeared in the witness box. The terms in which the objection was raised were spelled out in the cross-examination of this witness, when it took place on 13.6.1988, which was in this term "It is correct that I am the paid employee of the company. H.M.T. is a Limited Company and is a Government of India Undertaking. It is correct that governing body of the H.M.T. is a Board of Governor. It is incorrect to suggest that I have no power to sign the letter of subrogation and Special Power of Attorney on behalf of the Company." The plaintiff's evidence continued upto 4.8.1988 and no effort was made on behalf of the plaintiffs/respondents to bring on record the resolution of Board of Governors, which authorized Mr.Ram Chand to sign the Power of Attorney and letter of subrogation in favour of plaintiff no.1. The plaintiffs have sought to rely upon the presumption raised by Section 85 of the Indian Evidence Act about due execution and authentication of a Power of Attorney executed before a Notary Public and attested by him. While it is correct that Section 85 of the Indian Evidence Act raises such a presumption yet the presumption does not enable the Court to presume that the executant was duly authorized by the member on whose behalf he was acting to execute the documents signed by him. To this effect the judgment is reported as M/s. Enfield India Ltd. vs. Union of India, 1995 (1), P.L.R., page 11, Delhi High Court. Since it is not disputed before me that the plaintiff No.2 H.M.T. Ltd., Pinjore is a limited company, it was incumbent upon the plaintiff to prove that Shri Ram Chand, the



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person who had executed the Power of Attorney and letter of subrogation Ex.P-5 & P-6 was duly authorized by plaintiff No.2 to execute the documents on its behalf and the failure of the plaintiffs to prove this fact in support of the objection having been taken by the defendant at the time when the documents were exhibited would fatal to the plaintiff's case and warrants a reversal of findings on issue No.3.”

[5] Counsel for the appellants is not in a position to dispute the fact that so far as the authorization in favour of Ram Chand is concerned, the same was not brought on record and remained arises.

[6] In view thereof, this Court does not find any reason to interfere in a well reasoned findings recorded by the Lower Appellate Court.

[7] Regular Second Appeal is ordered to be **dismissed**.

[8] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

25.03.2025
'R. Sharma'

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