

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

FAO No. 219 of 1990 (O&M)

Date of decision: September 2, 2015

The New India Assurance Co. Ltd.

...Appellant

Versus

New Midh Bhabra Transport Co. Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Neeraj Khanna, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The insurance company is in appeal challenging the liability cast on it for the death of a passenger travelling on the roof of the bus. The insurance is only to cover the risk for the negligence on the part of the driver or the conductor. If the conductor has been negligent in allowing the passenger to travel on the roof of the bus, it shall be taken squarely as including the risk which the insurer was undertaking under the policy coverage. This Court in Raj Kumar Versus Smt. Sunita FAO No. 3668 of 2011 has allowed for indemnity, while relying on a Division Bench judgment in Oriental Insurance Company Limited Versus Smt. Meena Devi and others 2012 (2) PLR 629. It has considered the same issue to hold that the negligence of the driver or the conductor allowing the passengers to travel on the roof of the bus would still make liable the insurance company.

In this case, the Tribunal has allowed for a partial abatement of claim to the extent of 33% as contributory negligence. The insurance company must, therefore, feel satisfied that a portion of the liability has been scale down to its benefit and it cannot treat itself as aggrieved.

2. The appeal is dismissed.

September 2, 2015
prem

(K.KANNAN)
JUDGE