

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

**FAO No. 661 of 2007 (O&M)
Date of Decision:- 21.04.2015**

United India Insurance Co. Ltd.

.....Appellant

Versus

Rati Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Gopal Mittal, Advocate for the appellant.

SHEKHER DHAWAN, J.

Appellant-Insurance Company has challenged the award dated 17.11.2006, passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded the compensation of ₹2,00,000/-, on account of death of Dhanraj in road motor vehicular accident.

2. Relevant facts for the purpose of decision of the present appeal that claimants-Rati Ram and Smt. Shakuntla (parents), had filed the claim petition on account of death of their son Dhanraj in an automobile accident on 28.06.2004 at 4.00 PM. As per

claimants-respondents, Rati Ram along with Dhanraj and Surjeet were present at the tube-well on fields adjacent to Palwal Aligarh Road. The employees of DHBVN were replacing the old electric wires with new electric wires from Kothra of Prem to Kothra of Jaipal. Rewati, while driving his tractor bearing registration No.HR-50-5990 in a rash and negligent manner came at very fast speed from the side of Aligarh (Yamuna Bridge side) and got entangled with the electric wires and uprooted electric poll, hitting Dhanraj and same resulted into death of Dhanraj on the spot. The matter was reported to the police.

3. The claimants filed the claim petition. The same was contested by the respondents. 'The Tribunal' framed issues and after recording the evidence, awarded compensation of ₹2,00,000/- and the liability was fastened upon Rewati (driver), Ram Pal, Khem Chand (co-owners) and appellant-Insurance Company i.e. United India Insurance Company Ltd., being insurer of tractor.

4. Notice was issued to the respondents but there was no representation on their behalf and as such they were proceeded against ex-parte at the time of arguments.

5. Mr. Gopal Mittal, Advocate, learned counsel for the appellant took the plea that 'The Tribunal' has not passed the order regarding recovery rights from the owner, as the accident had taken place with the involvement of tractor-trolley and the same was in violation of insurance policy.

6. Taking the case from undisputed facts that death of Dhanraj

had taken place because of involvement of tractor-trolley bearing registration No.HR-50-5990. The tractor was insured on the date of accident and the insurance policy for the period of 01.10.2003 to 05.10.2004. Rewati, who was driving the tractor-trolley was facing a criminal case, for causing the accident because of rash and negligent manner. However, the trolley was not insured and accident had taken place with tractor only. The driving licence of Rewati produced on file was to drive motor-cycle, scooter, jeep and tractor only. The insurance company took the plea that they are entitled to recover the amount from the owner of the vehicle but 'The Tribunal' fell in error while not granting the recovery rights to the appellant-insurance Company. This fact came in the evidence by way of first information report that about 15 persons were travelling in the tractor-trolley and FIR was lodged at the instance of Rati Ram. Eye witness Sarjeet, while appearing as PW2 in his cross-examination deposed that there were 10-12 persons sitting in the trolley and 2 to 3 person were sitting on the tractor. It is not disputed, in any way, that the tractor-trolley is not meant for carrying passengers but 'The Tribunal' ignored this fact while passing no order regarding grant of recovery rights to the appellant-insurance company.

7. Hence, the appeal is partly accepted and the award dated 07.11.2006, passed by 'The Tribunal' is modified to the extent that appellant-insurance Company shall be entitled to recover the amount of compensation, if paid to the claimants-Rati Ram and others. Appellant-Insurance Company shall also entitled to recover interest @ 6% per

annum from the date of payment to the claimants till the date of payment by the driver and owner of the appellant-Insurance Company. However, the remaining conditions regarding payment of amount of compensation/rate of interest and disbursal of amount shall remain unaltered.

8. Accordingly, the present appeal is accepted partly.

April 21, 2015
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(SHEKHER DHAWAN)
JUDGE