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

FAO No.4970 of 2015 (O&M)
Date of Decision: October 28, 2015.

The New India Assurance Co. Ltd.

..........APPELLANT(s).

VERSUS

Smt. Kanta and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Sidhu, Advocate
for the appellant (s).

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SURINDER GUPTA, J.

This is appeal by New India Assurance Company Ltd. Against the award dated 29.04.2015 passed by Motor Accident Claims Tribunal, Kaithal (later referred to as the Tribunal).

2. As per the claimants, Suresh (since deceased) along with one Radhe Sham son of Deva, resident of Alipura, District Jind was going on a motorcycle bearing registration No.HR-32-E-4966 being driven by the deceased. At about 12.30 P.M. when they reached ahead of Titram turn of road near Shiv Shakti Dhaba, a tractor bearing registration No.HR-08-F-7408 (later referred to as the offending vehicle) being driven by respondent No.1 in a rash and negligent manner came at a very high speed and hit the motorcycle after coming on the wrong side of the road. The motorcycle fell down in front of the offending vehicle and its front wheel crushed the head

of Suresh. Radhe Sham, the other occupant of the motorcycle also received injuries.

3. The Tribunal on appraisal of evidence, allowed compensation of ₹13,50,400/- with interest @7% per annum from the date of institution of the petition till realisation of the whole amount of compensation.

4. Learned counsel for the appellant has argued that tractor was attached with a trolley at the time of accident, as such, it was a transport vehicle. Charan Dass, driver of the offending vehicle was possessing licence to drive LMV-tractor, motorcycle-WG, LMV-NT. This shows that he was not having any authority to drive a transport vehicle. The liability of the insurance company to pay the compensation, as such, is not attracted in this case.

5. The issue as to whether the insurance company can be absolved from its liability to pay the compensation amount or can it be allowed recovery rights against owner and driver of the offending vehicle, if the driver possessing licence for driving the tractor at the time of accident, was driving a tractor attached with trolley, has already been discussed in detail by this bench in case *"**Oriental Insurance Company Ltd. Vs. Surinder and others**" FAO No.4535 of 2013 decided on 14.10.2015.* Relying on the observations of Hon'ble Apex Court in case ***Fahim ahmad and others vs. United India Insurance Co. Ltd. and others, 2015(1) SCC (Civil) 258*** and ***Nagashetty vs. United India Insurance Co.Ltd., 2001 (8) SCC 56***, the above question of law was answered against the insurance company. Learned counsel for the appellant Mr. S.S. Sidhu, Advocate was also representing the

insurance company/appellant in that case. The accident in this case had taken place with tractor and in the case of ***Nagashetty (supra)***, it was observed that a person having an effective/valid licence to drive a tractor can drive even when the tractor is used for carrying goods and is not disqualified to drive tractor attached with trolley.

6. In view of the observations in case of ***Oriental Insurance Company Ltd Vs. Surinder and others (supra)***, this appeal has no merits.

7. Dismissed.

(SURINDER GUPTA)
JUDGE

October 28, 2015.
Sachin M.