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

FAO No.1033 of 2003 (O&M)

Date of decision:15.02.2016

The National Insurance Company Limited ... Appellant

versus

Smt. Raj Kali and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Naveen Kapoor, Advocate,
 for the appellant.

 Mr. Pankaj Mehta, Advocate,
 for Mr. Bhupinder Singh, Advocate,
 for respondents 1 to 4.

K.Kannan, J. (Oral)

1. The Insurance Company is in appeal, aggrieved against the order of the Tribunal making it liable to pay the compensation awarded to the claimants and giving a right of recovery against the owner and driver for alleged violation of terms of policy. It was a case of the deceased travelling admittedly as a gratuitous passenger having taken a lift in a goods carriage. He was a Constable and returning home after a training camp, when the accident occurred and the vehicle had turned turtle.

2. The court below applied the decision in **New India**

Assurance Company Versus Kamla-(2001) 4 SCC 342 and directed

the amounts to be paid by the insurer and ordered recoveries against the owner and driver. The application of law is erroneous in the light of law laid down by the Supreme Court in **New India Assurance Company Limited Versus Asha Rani-(2003) 2 SCC 223** that held the Insurance Company cannot be made liable for the claimants who lodged a claim for death of a gratuitous passenger.

3. The order casting the liability on the insurer is, therefore, set aside. This court has provided for recovery upto 50% at the time of admitting the appeal to the extent to which the claimants have already recovered. The Insurance Company will direct its recoveries against the owner and driver in execution proceedings. The extent to which the claimants have been prevented from executing the award by virtue of the order, such claimants will exercise the right of enforcement of award only against the owner and driver and not against the insurer.

4. The award is modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

15.02.2016
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