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

CR-7644-2016 [O&M]

Date of Decision : December 22, 2016

Jai Karan Sharma

... Petitioner

Versus

Oriental Insurance Company Ltd etc.

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present Mr. S.K.Verma, Advocate,
for the petitioner.

Mr. Vinod Chaudhri, Advocate,
for respondent No.1.

Mr. Parminder Singh, Advocate,
for respondent Nos. 2 and 3.

SHEKHER DHAWAN, J.

Present petition is challenge to the order dated 7.10.2016 [Annexure P/5] passed by Additional District Judge, Jind whereby the Executing Court ordered to continue with the execution petition so as to recover the amount of award passed by Motor Accident Claims Tribunal, Jind [for short, "the Tribunal"] dated 25.07.2006 [Annexure P/1] against JD No.3 [present petitioner] only.

2. Learned counsel for the petitioner contended that in fact, the award, Annexure P/1, was passed by the Tribunal fixing the liability upon respondents No.1, 1-A and 3 [i.e. Petitioner, respondent no.2 and

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respondent No. 3 herein] respectively in equal shares. He further contended that in appeal [i.e. FAO No. 4414 of 2006], this Court enhanced the compensation amount and passed specific order that the right of recovery to the insurer shall continue to be same for the enhanced amount as well and still the Executing Court passed the order for effecting recovery against JD No. 3 only, whereas the liability to pay the amount of compensation is of respondent Nos. 1, 1-A and 3 in equal shares. The impugned order deserves to be set-aside.

3. Learned counsel for the respondent contended that as per order passed by this Court in the appeal, the recovery rights were given to the Insurance Company against the owners only.

4. Having considered the submissions made by learned counsel for the parties and appraisal of documents available on the file, this Court is of the considered view that as per award, Annexure P/1, passed by the Tribunal, recovery rights were given to the Insurance Companies [i.e., respondent No. 2 and 4 before the Tribunal] to effect the recovery from respondents No.1, 1-A and 3. The relevant portion of the award is extracted below:-

“.... At the same time, it is also ordered that Insurance Companies, respondents No. 2 and 4 are entitled to refund of the awarded amount from respondents No.1, 1-A and 3 from the driver and owner of the offending vehicle and owner of container on which the deceased was employed, in equal shares respectively. Memo of costs be prepared and file be consigned to the record room.”

5. Vide order dated 7.12.2010 [Annexure P/2] passed by this Court in FAO No. 4414 of 2006, it was observed in para No. 4 as under:-

“4. The Tribunal while disposing of the cases has already provided for

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a right of recovery to the Insurer from the owner insured. The same direction will continue even as regards to the enhanced portion of the award.”

6. A conjoint reading of orders Annexures P/1 and P/2 would show that the recovery rights have been given to the insurance companies to recover the awarded amount from respondents no. “1, 1-A and 3 in equal shares” and the Court below has misread the same resulting in erroneous finding. The impugned order dated 7.10.2016 [Annexure P/5] is set-aside and it is made clear that the Insurance Companies [respondents No. 2 and 4] shall be entitled to recover the amount of compensation from respondents No. 1, 1-A and 3 “in equal shares” only in terms of award, Annexure P/1 by the Tribunal.

7. The revision petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

December 22, 2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No