

914.

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

FAO No.2314 of 1998 (O&M)

Date of decision:17.02.2016

United India Insurance Company Limited ... Appellant

versus

Smt. Bishan Devi and others Respondents

II. FAO No.2315 of 1998 (O&M)

United India Insurance Company Limited ... Appellant

versus

Smt. Maya Devi and others Respondents

III. FAO No.2316 of 1998 (O&M)

United India Insurance Company Limited ... Appellant

versus

Rajinder Singh and others Respondents

IV. FAO No.1856 of 1998 (O&M)

Smt. Maya Devi and others ... Appellants

versus

Rohtash and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. V. Ramswaroop, Advocate,
for the appellant in FAO Nos.2314 to 2316 of 1998 and
for respondent No.6 in FAO No.1856 of 1998.

Mr. Neeraj Khanna, Advocate,
for New India Assurance Company Limited.

Mr. Surinder Dagar, Advocate,
for respondents 8 and 9 in FAO No.2315 of 1998.

Ms. Sapna Seth, Advocate.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. All the appeals by the Insurance Company are on the issue of liability for the claims are at the instance of the passengers or the representatives for compensation for injuries and death that resulted by the insured's vehicle dashing against yet another truck coming from the opposite direction. The Tribunal apportioned the liability of 50:50 and directed 50% to be paid by New India Assurance Company which was the insurer of the vehicle coming from the opposite direction and made 50% of the liability on United India Insurance Company which was the insurer of the truck in which the passengers were travelling.

2. The contention of the insurer was that the vehicle was a truck insured for carrying goods and used as such. The passengers

in a goods vehicle cannot obtain any benefit of risk coverage against the insurer. This point was missed by the Tribunal.

3. The decision of the Tribunal is erroneous and it conflicts with the law laid down by the Supreme Court in **New India Insurance Company Limited Versus Asha Rani and others-2001 (3) PLR 637**. It is set aside and the liability cast on the insurer is vacated. If any portion of the amount has been claimed by the claimants from the insurer, the insurer shall effect the recoveries against the insured and the driver and not against the claimants. If any portion of the amount remains unsatisfied, the claimants will have a right of recovery only against the owner and driver of the vehicle in which they were travelling and not against the insurer. The liability shall be on Nasruddin and Maimuna-respondents 8 and 9 in FAO No.2315 of 1998.

4. All the appeals by the insurer in FAO Nos.2314 to 2316 of 1998 are allowed to the above extent. The appeal by the claimants in FAO No.1856 of 1998 is dismissed for default.

(K.KANNAN)
JUDGE

17.02.2016
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