827.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5614 of 2011 (O&M)
Date of decision:17.02.2016

The New India Assurance Company Limited ... Appellant

versus

Manju and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.C. Gupta, Advocate, for the appellant.

None for the respondents.

----

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. The appeal by the Insurance Company is on an issue of liability. The owner had allowed his friend to drive the tractor and his own brother, who was seated on the mudguard, fell down from the tractor and got run over. The accident had resulted in death and the representatives of the deceased lodged a claim against the insurer and the owner of the vehicle. There is no liability for an insurer to cover the risk of an unauthorized person seated on the mudguard in terms of judgments in ***United India Insurance Company Limited Versus Smt. Santra Devi-2010(4) PLR 432; United India***

<u>Insurance Company Limited Versus Ramji Lal-2010(4) PLR 436</u> and ***<u>Krishan Versus Tarawati widow-2011(3) PLR 29</u>***. The liability cast on the Insurance Company is erroneous and it is set aside. The owner and the driver have been served, but none appears. The award is set aside and the Insurance Company is exonerated from liability except to the tune of ₹50,000/- as recoverable on no fault basis under Section 140 of the Motor Vehicles Act with interest as already awarded. If the whole amount has been recovered from the Insurance Company, the Insurance Company will make the recoveries against the owner and driver and not against the claimants.

2. There is also an other ground that the amount assessed is not correct. I do not think it is relevant for me to examine it in the light of my finding that the Insurance Company is not liable in the first place beyond ₹50,000/-.

3. The award is set aside against the insurer except for the amount of ₹50,000/- and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

17.02.2016
sanjeev