

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

**C.M. No.4611-CII-2016 in/and
C.M. No.7879-CII-2014 in/and
F.A.O. No.2215 of 2014
Date of Decision : 31.03.2016**

Harjeet and another

..... Appellants

versus

Kela Devi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashish Pannu, Advocate
for the applicants-appellants.

Mr. Ashwani Talwar, Advocate
for the non-applicant-respondent No.6.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

CM-7879-CII-2014

This is an application for condoning the delay of 106 days in
filing the appeal.

For the reasons recorded, the application is allowed subject to
all just exceptions. Delay condoned.

CM-4611-CII-2016 in/and FAO-2215-2014

At the request of both the learned counsel the main case is

taken up for hearing today itself.

Affidavit filed on behalf of respondent No.6 is taken on record.

Copy has been supplied.

This appeal has been filed against the award dated 09.10.2013 passed by the Tribunal. The limited dispute is whether the insurance company could have been absolved. For the decision of this dispute it would not be necessary to give the detailed facts of the matter.

Suffice it to say that the appellant No.2-owner had taken a comprehensive insurance from the respondent No.6 and as per that policy the seating capacity of the tractor was shown as two. Apart therefrom the appellant No.2 had paid a premium of Rs.100/- for the owner/driver and Rs.25/- towards premium for injury/death which may be caused to an employee. In the present case, the deceased was the employee of the appellant No.2 and was travelling in that capacity on the tractor alongwith the driver when the accident took place. The Tribunal absolved the insurance company-respondent No.6 on the ground that the authorized seating capacity of the tractor was only one and therefore the insurance company could not be held liable when more than one person are seating on the tractor.

Learned counsel for the respondent No.6-insurance company has argued that the only mistake made was by taking the seating capacity as two and it was an inadvertent error because the mere fact that premium was paid for an employee could not be held to be meant that the insurance company had accepted that the seating capacity was two. As per him, if the

deceased had been seating alone in the tractor at the time of the accident he would have been covered. Likewise if the appellant No.1-driver who was the paid driver had been seating alone when the accident took place he would have also been covered. Further as per him this erroneous mentioning of seating capacity as two could not enlarge the scope of the contract into illegality.

Learned counsel for the appellants have relied upon a series of judgments which are as under:-

- i. *Divisional Manager, New India Assurance Co. Ltd. vs. P. Irulayee and others*, passed in CMA (MD) No.261 of 2010, decided on 07.01.2013, Madras High Court;
- ii. *The Branch Manager, The New India Assurance Co. Ltd. vs. Panchali and others*, passed in CMA No.1876 of 2008, decided on 25.11.2013, Madras High Court;
- iii. *Thimmakka vs. The Manager, IFFCO Tokio Gen. Insurance Co. Ltd.*, passed in MFA No.6709 of 2011, decided on 13.03.2014, Karnataka High Court;
- iv. *A. Narsimha Reddy vs. Middle Chinna Niranjan and another*, passed in MACMA No.1102 of 2010, decided on 22.09.2014, Andhra High Court;
- v. *National Insurance Co. Limited. vs. Smt. Gurdeep Kaur and others*, passed in FAO No.4366 of 2009, decided on 13.08.2015, P&H HC;
- vi. *New India Assurance Co. Ltd. vs. Shimla Devi and others*, passed in FAO No.3845 of 2012, decided on 28.07.2015, P&H HC.

In all these cases in similar circumstances the Courts have held that the insurance company would be liable.

Learned counsel for the respondent No.6-insurance company is not in a position to cite any contrary judgment.

In the circumstances, the appeal is allowed and that portion of the impugned award is set aside whereby the respondent No.6 was absolved and it is directed that respondent No.6 is also jointly and severally liable to

pay the compensation alongwith the appellants.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 31, 2016

ashish

**(AJAY TEWARI)
JUDGE**