

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

FAO No. 2720 of 2013 (O&M)

Date of decision: 31.10.2017.

United India Insurance Company Limited

...Appellant

versus

Darshna and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Varun Mittal, Advocate for
Mr. Vikas Mohan Gupta, Advocate
for the appellant.

None for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

1. The case of the claimants is that the deceased was sitting on the mudguard of the tractor when he was thrown off, fell on the road and died of fatal injuries suffered when he was run over by a speeding vehicle. The tractor was not a vehicle meant for carrying passengers. The manufacturer made provision for driver seat alone. There is no passenger seat on a tractor. The insurance was an “act policy” which meant that insurance company would indemnify the insured only against the 3rd party but there is no insurance cover for person sitting on the mudguard. Therefore, the Tribunal could not have awarded the compensation.

2. When this appeal came up for hearing on 23.05.2013, this Court stayed the disbursement of the amount of compensation when the

decision of the Supreme Court in National Insurance Company Limited Vs. Sinitha and others, 2012 (1) RCR (Civil) 205 and the judgment of the Bench of this Court in case titled United India Insurance Vs. Ramji Lal 2010 (4) PLR 436 was cited before the Tribunal while observing the award as unsustainable in the eyes of law. The position which appears settled in law is that the person travelling on the mudguard is an unauthorized person in view of Rule 28 of The Road Regulations of 1989. There is a prohibition upon the driver of the tractor that he shall not carry or allow any person to be carried on the tractor and in cases involving death of persons falling off the mudguard of the tractor the “pay and recover” principle is also not applicable. The tractor is neither a passenger vehicle nor a goods vehicle where persons could be legitimately carried.

3. On the facts of this case, the deceased could at best be considered as an employee of the farmer in case the latter was a driver or owner of the vehicle. Consequently, the remedy available to the claimants did not fall in the Tribunal for adjudication which remedy the claimants may still pursue before the proper forum, if it lies and law permits legal recourse, but as far as this appeal is concerned, it succeeds. It may be mentioned that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 for the grant of compensation.

4. As a result, the award of the Motor Accident Claims Tribunal,

Patiala dated 06.02.2013 is set aside.

(RAJIV NARAIN RAINA)
JUDGE

October 31, 2017

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Whether speaking/reasoned : Yes

Whether reportable : No