

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

FAO-3873 of 2013 (O&M)
Date of decision: 21.12.2017

Oriental Insurance Company Ltd.

.... Appellant

Versus

Krishana Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Lalit Garg, Advocate
for the appellant.

Mr. Tapan Yadav, Advocate
for respondents No. 1 to 3.

Respondent No.4 ex parte.

Avneesh Jhingan, J.

The present appeal has been preferred against the award dated 09.05.2013 passed by Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal').

The Insurance Company has filed the present appeal inter alia on the ground that insurer is not liable to pay the compensation in the present case as the deceased was traveling on the *mudguard* of the tractor which was owned by him.

The factual matrix of the present case is that on 02.03.2008 around 4.00 A.M. Attar Singh alongwith Rohtash Kumar was travelling on a tractor driven by Raj Kumar bearing registration No.HR34A-8602 (at this stage it may be clarified that in the heading of the award it has been wrongly mentioned as truck number). The tractor turned turtle near village Jairpur as

a result Attar Singh sustained injuries and died on the spot.

A claim petition under Section 166 of the Motor Vehicle Act, 1988(for short 'the Act') was filed by the legal heirs of the deceased. The Tribunal awarded a sum of Rs.4,40,000/- along with interest @ 6% per annum.

The insurance company is aggrieved of the said award on the ground that they are not liable to pay the compensation.

I have heard the learned counsel for the parties, perused the paperbook and record.

Learned counsel for the insurance company argued that the tractor was registered having a sitting capacity of one person. In the present case apart from driver, two persons were travelling on the vehicle and the deceased was one of the passenger. His contention is that there is violation of the terms and conditions of the policy and hence they are not liable to pay the compensation.

Learned counsel for the claimants has not resisted the arguments raised by learned counsel for the Insurance company but has argued that if Insurance Company is not liable then driver should be held to be liable.

Since, in the present appeal only issue is whether Insurance company is liable to pay the compensation in the facts of the present case or not? Same is decided in favour of the Insurance Company as the Hon'ble Apex Court in case of '**New India Assurance Co. Ltd. Vs. Vedwati and Ors 2007(2) RCR(Civil)115'** held that Insurance Company would not be liable to pay compensation for the passenger travelling on a goods carriage vehicle.

The Hon'ble Apex Court in the said case was dealing with the cases covered under the old Act as well as cases covered under 1988 Act. The comparison of provisions of old Act and 1988 Act was made and the

distinction in the language of 'goods vehicle' appearing in the old Act and 'Good carriage' in 1988 Act was considered. Thereafter, the Hon'ble Apex Court came to conclusion that the provisions of 1988 Act do not cast any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods carriage vehicle and the Insurance would have no liability thereof.

The decision in Vedwati's case (supra) was duly taken note of by the Hon'ble Apex Court in case of '*The New India Insurance Company Ltd. Vs. Darshana Devi and others, 2008 (VOL.III) PLR 471*' .

This Court in case of '*The Oriental Insurance Company Limited, Chandigarh Vs. Shri Anil Kumar and others, 2012 (VOL. IV) PLR 304*' after taking into consideration the various decisions of Hon'ble Apex Court held that Insurance Company is not liable to pay compensation to a passenger travelling on a Tractor.

In view of the settled position of law the appeal is allowed and it is held that Insurance Company is not liable to pay the compensation.

The Insurance Company would take appropriate steps with regard to the statutory amount deposited for filing of appeal.

(AVNEESH JHINGAN)
JUDGE

21.12.2017
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1. Whether the order is speaking/reasoned: Yes/No

2. Whether the order is reportable : Yes/No