IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-26-2015 (O&M)
Date of decision: 27.09.2017

HDFC ERGO GENERAL INS.CO.LTD. ...Appellant

Versus

KASAM & ORS. ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Goyal, Advocate for the appellant.

None for respondents No.1 to 3.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 22.10.2014 to the limited extent that though the insurance company has been held to be not liable to indemnify the insured in view of findings recorded on issue No.2 but still the insurance company has been directed to pay compensation to the claimants and thereafter to recover the same from the driver and owner of the offending vehicle i.e. Tractor bearing No.RJ-05-2R-1888.

Counsel for the appellant has submitted that there is no challenge to findings of the Tribunal that as the deceased was sitting on mudguard of the offending vehicle and was a gratuitous passenger, the insurance company is not liable to indemnify the insured. It is further argued that since the insurance company is not liable to pay for injury or death of a gratuitous passenger travelling on a tractor, findings of the

Tribunal directing the insurance company to pay compensation to the claimants cannot be allowed to sustain and liable to be set aside. It has further been argued that controversy raised in the present appeal is squarely covered by the judgment of this Court **Data Ram and another Vs. TATA AIG General Insurance Co. Ltd. and others, FAO No.4290 of 2014** along with connected case decided on 24.08.2017.

There is no representation on behalf of the respondents to make any submission to support findings of the Tribunal directing the insurance company to pay and thereafter to recover.

I have heard counsel for the parties, perused the paper book particularly the award dated 22.10.2014 and the judgment of this Court cited above.

The controversy raised in the present appeal is squarely covered by the judgment dated 24.08.2017 passed in FAO No.4290 of 2014. The insurance company has no liability in law to pay compensation for injury or death of a gratuitous passenger travelling on mudguard. In this view of the matter, findings of the Tribunal directing the insurance company to pay compensation cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the appeal is allowed and the insurance company is altogether exonerated of its liability to pay compensation. However, in case insurance company has already paid compensation to the claimants, it shall not made recovery from the claimants but would recover it from the insured/owner of the vehicle by filing an execution application.

No order as to costs.

Statutory amount of Rs.25,000/- deposited by the insurance company is ordered to be remitted to the Tribunal.

27.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No