

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

Date of decision: 17.5.2018

1.

**FAO No.10333 of 2014(O&M)
& XOBJC-71-CII-2015**

National Insurance Co. Ltd.

....Appellant

VERSUS

Mohan Seth and others

.....Respondents

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. M.K. Pundir, Advocate for respondents No.1 to 9.

Mr. G.C. Shahpuri, Advocate for cross objector/respondent No.10.

2.

FAO No.386 of 2015(O&M)

Mohan Seth and others

....Appellants

VERSUS

Dharampal and another

.....Respondents

Present: Mr. Manoj K. Pundir, Advocate for the appellants.

Mr. G.C. Shahpuri, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent – Insurance Co.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.10333 of 2014, 386 of 2015 and cross objections No.71-CII of 2015 as these have emerged out of the same award dated 29.08.2014 passed by the Motor Accidents Claims Tribunal, Yamunanagar at Jagadhari (in short 'the Tribunal') whereby compensation has been awarded on account of death of Sarwan in a motor

vehicular accident that took place on 25.06.2011 and the insurance company has been held liable to pay compensation to the claimants but allowed recovery right against owner-cum-driver of the vehicle Bolero Pick Up bearing No.PB05-S-9092.

FAO No.10333 of 2014 has been filed by the National Insurance Company Ltd. (hereinafter to be referred as 'insurance company'), cross objections in the said FAO have been filed by the driver cum owner of the vehicle in question whereas FAO No.386 of 2015 has been filed by the claimants seeking enhancement of compensation.

**FAO Nos.10333 of 2014 and
cross objections No.71-CII of 2015**

The sole submission made by counsel for the insurance company is that as the deceased was a gratuitous passenger travelling in Bolero Pick Up, a goods carrier the insurance company is entitled to be exonerated of liability to pay compensation as the insurance policy does not cover the risk of injury/death of a gratuitous passenger. In support of his contention, he has relied upon 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.**

Counsel representing the cross objector, on the contrary, would urge that as the vehicle was duly insured with the insurance company, insurer has a contractual obligation to indemnify the insured qua compensation payable to the claimants.

There is no challenge to findings of the Tribunal that Sarwan (since deceased) was a gratuitous passenger travelling in the aforesaid Bolero Pick Up at the time of accident. The controversy raised in the present appeal and cross objections is squarely covered in favour of the

insurance company and against the insured by judgment of this Court in **Data Ram and another's case** (supra) whereby it has been held that the insurance company is not liable to pay compensation with regard to injury/death of a gratuitous passenger carried in a goods vehicle. In this view of the matter, findings recorded by the Tribunal giving only recovery right to the insurance company are liable to be modified to the effect that insurance company shall not be liable to pay compensation. However, it is clarified that findings of the Tribunal holding driver-cum-owner of the vehicle in question to pay compensation are kept intact. In case the insurance company has already paid compensation to the claimants, it shall be entitled to recover the same from the insured and not from the claimants.

The appeal as well as cross objections are disposed of accordingly.

FAO No.386 of 2015

With regard to death of Sarwan, the Tribunal has awarded compensation of Rs.4,14,036/- payable with interest. The sole submission made by counsel for the claimants is that the Tribunal has not allowed reimbursement of medical bills marked as Mark A to H valuing Rs.2913/-. The claimants shall be entitled to reimbursement of medical expenses to the tune of Rs.2900/- which shall be payable by owner-cum-driver of the vehicle in question.

The appeal is partly allowed in the aforesaid terms.

MAY 17, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

yes/no
yes/no