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

FAO No. 4527 of 2014(O&M)

Date of decision: 24.9.2018

National Insurance Co. Ltd. …..Appellant

VERSUS

Sarita and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Suri, Advocate for the appellant.

Mr. S.K. Yadav, Advocate for respondents No.1 to 6.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 10.02.2014 passed by the Motor Accidents Claims Tribunal, Narnaul (in short 'the Tribunal') whereby compensation has been assessed on account of death of Suresh Kumar in a motor vehicular accident that took place on 05.08.2010.

Counsel for the appellant- insurance company would inform that the appeal has been preferred to assail findings of the Tribunal whereby insurance company has been held liable to pay compensation to the claimant though has been given right of recovery against the driver and insured of the vehicle. It is argued that as the policy obtained by owner of the offending vehicle is only an Act Policy and the deceased was one of the occupants of alleged offending vehicle Jeep No.HR16/A-0650, insurance company is not liable to pay compensation with regard to injury or death of a gratuitous passenger.

Counsel representing the claimants would inform that the claimants have already been paid compensation assessed by the Tribunal and the insurance company has already been given right of recovery against the insured and driver of the offending vehicle, therefore, it is expedient in the interest of justice that findings of the Tribunal allowing right of recovery in favour of the insurer against the insured is sustained and the insurance company may recover the amount from owner of the vehicle.

The findings of the Tribunal giving right of recovery against driver of the offending jeep cannot be allowed to sustain for want of privity of contract between the insurer and the driver. As such findings of the Tribunal giving right of recovery against driver of the vehicle are set aside. In the circumstances, service of driver of the offending vehicle is dispensed with.

Indisputably, the insurance company has already paid compensation to the claimants and has right of recovery against the insured. In the given circumstances, the insurance company is at liberty to recover compensation from the insured in place of from the claimants.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms. The insurance company would be at liberty to recover the compensation already paid to the claimants from the insured by filing an appropriate application before the Tribunal.

SEPTEMBER 24, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no