

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

**FAO No.6030 of 2017 (O&M)  
Date of Decision.30.05.2018**

Gadush Khan @ Khadus Khan and another ...Appellants

**Vs**

HDFC Ergo General Insurance Company and others ...Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Rohit Rana, Advocate  
for the appellants.

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**AMIT RAWAL J.(ORAL)**

**C.M. No.11209-CII of 2018**

The application for preponing the date of hearing is allowed.

The main appeal is taken on board today itself.

**FAO No.6030 of 2017 (O&M)**

The instant appeal has been preferred by the owner and driver of the offending vehicle bearing No.RJ-40-RA-0900 against the award passed by the Tribunal on the ground of quantum and liability, accompanied by an application seeking exemption from depositing statutory amount of ₹25,000/-.

Mr. Rohit Rana, learned counsel appearing on behalf of appellants submitted that the Tribunal has erred in fastening the liability upon the appellants while exonerating the insurance company, despite there being a valid insurance policy. The Tribunal has wrongly erred in granting compensation of ₹9,70,200/- to the claimants, after attributing 30% negligence to the deceased whereas it

was the deceased who was totally negligent in sitting on mudguard of the tractor. The driver was driving the vehicle at moderate speed. The deceased fell down from tractor due to heavy jump/jerk in the tractor, which was beyond the control of the driver. In the absence of any documentary proof, income of the deceased assessed as ₹8000/- per month is on higher side. At the most, the insurance company has to satisfy the claim and thereafter, recovery could be made from the owner and driver, thus, urges this Court for setting aside the award passed by the Tribunal.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rana. As per Section 2 (44) of the Motor Vehicles Act, “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller, meaning thereby, tractor by itself cannot be treated as a goods carriage. The contention of learned counsel for the appellants with regard to negligence of the deceased falls flat in view of Regulation 28 of the Rules of Road Regulations, 1989, which reads as under:-

***“28. Driving of tractors and goods vehicles.- A driver when driving a tractor shall not carry or allow any person to be carried on the tractor. A driver of goods carriage shall not carry in the driver's cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward.”***

A perusal of the aforementioned Rule clearly reveals that it is the duty of driver of the tractor to not carry or allow any person

to be carried on the tractor, therefore, the driver of the tractor was negligent in allowing a person to sit on mudguard of the tractor.

There is not even scope to apply principle of payment and recover, for, such principle applies only to situations where the claim is by a third party/workman or fully covered by the requirements of compulsory insurance under Section 147. If the Act does not require a policy to be taken for a traveller other than a driver of a tractor or to cover third party risk, it means that there is no requirement of insurance at all and the question of making liable the insurer to pay and recover under section 149(4) proviso or under section 149(5) of the MV Act does not arise.

As far as determination of compensation is concerned, I am of the view that the amount of compensation assessed at ₹9,70,200/- after deducting 30% out of total compensation of ₹13,86,000/- requires no interference. The Tribunal has rightly assessed the income of the deceased as ₹8000/- per month and adopted a multiplier of 18 suitable to the age of deceased, who was aged 25 years at the time of accident.

As an upshot of my finding, I do not find any reason to interfere with the award passed by the Tribunal. The same is upheld and the appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**May 30, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No