

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

FAO No.846 of 2018(O&M)

Date of decision: 9.2.2018

United India Insurance Co. Ltd.Appellant

VERSUS

Dharampal and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ravinder Arora, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 21.11.2017 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been awarded on account of death of Pushpinder, aged about 10 years, in a motor vehicular accident that took place on 29.03.2016.

The first submission made by counsel for the appellant is that though the driver was possessing licence to driver a Heavy Transport Vehicle but he did not possess a licence to drive a vehicle carrying hazardous goods. The second submission made by counsel is that the Tribunal has allowed compensation of Rs.5,00,000/- by relying upon judgment of Hon'ble the Supreme Court **Kishan Gopal Vs. Lala, 2013(4) RCR (Civil) 276.**

Counsel for the appellant, in response to a query, has fairly informed that though the Insurance Company had raised a plea that driver was not possessing a valid driving licence but no such plea was

specifically raised that the vehicle in question was being used for carrying hazardous goods and the driver did not possess a licence to drive such a vehicle. Perusal of the award would reveal that even no such contention was raised at the time of disposal of the case. The question whether the vehicle was being used for carrying hazardous goods or otherwise is a question of fact to be decided by the Court below. As the appellant did not raise any such issue before the Tribunal, there was no opportunity with owner of the vehicle to counter such a statement of the insurer. Under the circumstances, the insurance company cannot be allowed to raise a factual controversy for the first time in appeal. Accordingly, plea of the insurance company in this regard is untenable and liable to be rejected.

The Tribunal has allowed compensation of Rs.5,00,000/- by relying upon judgment of Hon'ble the Supreme Court in **Kishan Gopal's case** (supra) wherein the Court awarded compensation of Rs.5,00,000/- in the case of death of a child aged about 10 years.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

FEBRUARY 9, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no