IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.5623 of 2005 (O&M)
Date of Decision: March 01, 2019.

National Insurance Company Limited
..........APPELLANT(s).

VERSUS

Ram Parsad and others
........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Deepak Suri, Advocate
for the appellant (s).

Mr. Hitesh Kumar Sammi, Advocate for
Mr. N.L. Sammi, Advocate
for respondents No.1 and 2.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Sonepat vide award dated 02.09.2005 awarded compensation of ₹1,78,000/- for death of Bhagirath son of claimants in a motor vehicle accident with tractor bearing registration No.HR-11-6110 (later referred to as 'the offending vehicle').

National Insurance Company Limited, insurer of the offending vehicle has come up with this appeal challenging passing of the award against it.

Learned counsel for the appellant has confined his submission only for grant of right to recover the amount of compensation paid to the claimants as per the award from the owner of the offending vehicle. He has argued that deceased was travelling on mud-guard of the tractor, which is not a commercial vehicle or can be used for carrying the passengers.

Relying on the observations in case of ***The New India Insurance Company Limited Vs. Darshana Devi and others (2008-3) PLR 471,*** he has argued that the appellant is entitled to right to recover the amount of compensation paid to the claimants from the owner of the offending vehicle.

None has appeared on behalf of driver and owner of the offending vehicle. However, learned counsel for claimants-respondents No.1 and 2 has argued that though the deceased was sitting on the mud-guard of the tractor but he was not a passenger but was going to bring fertiliser for agricultural purpose, as such, he does not fall in the category of passenger, thereby exonerating the insurance company to pay the compensation.

The tribunal has taken note of the fact that deceased was sitting on the mud-guard of the tractor at the time of accident but has made the insurance company liable with the plea that the tractor was being used for agricultural purposes and deceased does not fall in the category of passenger.

A coordinate Bench of this Court in para 9 of the judgment in case of ***The Oriental Insurance Company Ltd. vs. Ishwanti and others, 2012 (3) PLR 840*** has observed as follows:-

"9. As per the case of the claimants the deceased Amarjeet was travelling on a tractor with his brother Manjeet. While Manjeet was driving the tractor, Amarjeet was sitting on the mudguard of the tractor. Manjeet was working in the muddy fields. All of a sudden the rear wheel of the tractor got struck in the mud and the front portion of

the tractor went up in the air and suddenly fell down. Due to the result and jolt, Amarjeet sitting on the mud-guard fell on the ground and sustained grievous injuries on his abdomen and succumbed to his injuries. There is force in the submissions of the learned counsel for the Insurance Company that the seating capacity of the tractor was one and there is breach of the terms and conditions of the policy. The deceased was sitting on the tractor on his own risk. The tractor was insured for the driver and not for any other person/passenger, as the premium paid was for the driver only. A perusal of Exh.R-2, photocopy of registration of tractor shows that seating capacity of tractor is for one person i.e. driver. It is, therefore, plain logic that when the seating capacity of a tractor is for one person i.e. driver, the other person sitting on it, is not covered under the insurance policy. There is breach of the terms and conditions of the policy. The Ld. Tribunal erroneously held that the amount of compensation be paid by all the respondents jointly and severally. The Insurance company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers."

In case of ***United India Insurance Co. Ltd., Regional Office, SCO No. 123-124, Sector 17-B, Chandigarh through duly constituted attorney vs. Ramji Lal and others, 2010 (4) PLR 436***, another coordinate Bench of this Court has observed as follows:-

"IV. A person travelling on mud guard is an unauthorized person :-

4. The Rules of Road Regulations of 1989 sets out under Rule 28 the following:-

"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."*

This rule makes a distinction between a driver driving a tractor and a driver of goods carriage which has a cabin. If it is a goods carriage, there could be a person other than the driver in a driver's cabin whose permitted number shall be prescribed in the registration certificate itself. If it is a tractor, there is no need of a reference even to the registration certificate. The workman carried in a goods carriage or a driver of any vehicle, who is a workman, shall always be entitled to an insurance cover. There is no compulsory insurance for a person other than the driver to travel in a tractor. We have already seen the tractor by itself is not a goods carriage and the compulsory insurance cover is only for a workman carried in a goods carriage or a driver, who is a workman. If therefore, a person is travelling on the tractor, who is not a driver but an unauthorized passenger, there was no need for compulsory insurance."

Hon'ble Apex Court in case of ***The New India Insurance Company Limited Vs. Darshana Devi and others (supra),*** has observed as follows:-

"*Yet again, in* ***Oriental Insurance Co. Ltd. Vs. Brij Mohan and others (2007-4) 148 PLR 88 (S.C.)****, wherein one of us (****S.B. Sinha, J****.) was a member, this Court noticed* ***Asha Rani and other*** *decisions. Following the same, it was stated :*

"10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was

merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in ***New India Assurance Co. Vs. Asha Rani and others [(2003) 2 SCC 223]*** *wherein the earlier decision of this Court in* ***New India Assurance Co. Vs. Satpal Singh [(2000) 1 SCC 237]*** *was overruled. In* ***Asha Rani (supra)*** *it was, inter alia, held:*

'25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-`a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

As per the settled proposition of law as discussed above, the insurer of the offending vehicle is entitled to recover the amount of compensation paid to the claimants as per the award passed by the tribunal from the owner of the offending vehicle.

This appeal has merits and is allowed accordingly. Award of the tribunal is modified to the extent that the appellant shall be entitled to recover the amount of compensation paid to the claimants from the owner of the offending vehicle.

(SURINDER GUPTA)
JUDGE

March 01, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***