IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 **Date of decision: 08.05.2019**

FAO-2443-2016 (O&M)

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

SUDESH & ORS ... Respondents

XOBJC-83-CII-2017 (O&M) in/and
FAO-2555-2016 (O&M)

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

SMT. BABLI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for the insurance company.
Mr. SS Shekhawat, Advocate
for respondents No.1 to 4/cross-objectors (FAO No.2555 of 2016)
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2443 and 2555 of 2016 and cross objections No.83-CII of 2017 in FAO No.2555 of 2016 as these have emerged out of the same award dated 04.02.2016 passed by the Motor Accidents Claims Tribunal, Rohtak whereby compensation has been assessed on account of death of Sanjay and Suresh Kumar in a motor vehicular accident that took place on 31.12.2014.

The aforesaid appeals have been preferred by the insurance company whereas the cross objections have been filed by claimants Babli and others in regard to death of Sanjay.

Counsel for the insurance company would inform that the appeals have been preferred primarily to assail liability of the insurance company to pay compensation.

The sole submission made by counsel for the insurance company is that as the policy issued by the insurance company in respect of maruti van No.DL-3CAG-2916 is liability only policy and the deceased were gratuitous passengers in the said vehicle, the insurance company has wrongly been fastened with liability to pay compensation.

Counsel for the cross objectors/claimants, on the contrary, has supported findings of the Tribunal fastening liability to pay compensation against the insurance company as well. To substantiate his plea for enhancement of compensation, it is argued that the claimants have not been adequately compensated.

The insurance company has filed the appeals to escape its liability to pay compensation. The applications for compensation were filed under Section 163-A of the Motor Vehicles Act, 1988 which envisages that liability to pay compensation can be fastened against the owner and insurer, if any, of the vehicle involved in the accident. The driver of the vehicle need not to be impleaded as a party as the claimants are not obliged to prove that occurrence is the result of fault attributable to driver of the vehicle in question.

Nand Kishore is the owner of maruti van No.DL-3CAG-2916. Appeals against Nand Kishore were dismissed by this Court vide order dated 14.01.2019. No doubt, Nand Kishore was ex parte before the Tribunal but the Tribunal passed an order in his favour by holding that the insurance company shall be liable to indemnify the insured. This Court made an order for issuance of notice to all the respondents including Nand Kishore in both the appeals. Even otherwise, once the Tribunal has passed an order favouring Nand Kishore to the effect that he is entitle to be indemnified by the insurer, no order to his prejudice can be passed without providing him an opportunity of being heard in compliance with principle of natural justice. In the given scenario, mere fact that Nand Kishore was ex parte before the Tribunal would not enure to benefit of the insurance company more particularly in the circumstances that order dated 14.01.2019 passed by this Court has not been set aside in competent proceedings. That being so, nothing survives for consideration in appeals filed by the insurance company. Accordingly, the appeals filed by the insurance company are dismissed.

Perusal of the award would reveal that the Tribunal has awarded compensation in complete consonance with the provisions of Section 163-A of the Act, as such, there is no justification for allowing additional compensation to the cross objectors.

For the foregoing reasons, the cross objections are dismissed, leaving the parties to bear their own costs.

08.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No