**(2013) 05 P&H CK 0054**

**In the Punjab And Haryana At Chandigarh**

**Case No :** FAO No. 498 of 1993 (O and M)

New India Assurance Co. Ltd. APPELLANT

Vs

Paramjit Kaur and Others RESPONDENT

**Date of Decision :** 02-05-2013

**Acts Referred:**

**Citation :** (2013) 171 PLR 621

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** L.M. Suri and Mr. Neeraj Khanna, for the Appellant;

**Final Decision :** Dismissed

## Judgement

K. Kannan, J.—In the present appeal preferred by the Insurance Company plea is for exclusion of liability on the ground that the deceased was a gratuitous passenger in a truck and there was no risk coverage to sustain the claim against the Insurance Company. The Tribunal, however, made the Insurance Company liable on the basis of the evidence given by the cleaner employed in the same truck who gave evidence to the effect that the deceased was an additional driver and he had been employed as driver in the very same company for at least four years prior to the accident. The owner-insured also stated in his written statement that the deceased was a driver employed in the company. The averment in the petition was simply that he was driver employed with the owner but there was no specific statement in the claim petition that he was second driver at that relevant time.

2. The learned counsel for the appellant would argue that there was no basis for such a contention that deceased was second driver employed by the insured at the relevant time of the accident. Leaned counsel would also refer to the terms of the policy which according to the insured was that the coverage was only for one driver and cleaner and the risk was not covered for another person.

3. I have gone through the evidence of cleaner of the vehicle at the relevant

time. His statement in-chief reads as under:-

Said Joginder Singh as well as Mohinder Singh deceased were working as driver in the truck in those days when the accident took place.

4. In the cross-examination it was only suggested to him that he and Mohinder Singh were not employed in the company and all of them were mere passengers in the truck. The Tribunal has posed the issue whether he was gratuitous passenger or driver at the relevant time and has found that Mohinder Singh was actually driver of truck at the time when the accident took place by reason and in pursuance of contract of employment with the second respondent-company where he had been employed as a truck driver. The Tribunal therefore, found that the deceased could not be termed to be a gratuitous passenger.

5. I have seen copies of the documents relating to the Insurance policy filed in the Court. The Insurance Company appears to have only filed the coverage note and not copy of policy itself. The coverage note makes reference to payment of premium under various heads that includes "2-D & CS".

6. Learned counsel would contend that the premium paid for one driver and one cleaner. I can not make such a reading. It is also possible that it can be treated as two drivers and one cleaner and whether No. 2 pertains to both driver and cleaner is not very much clear. It ought to have been spoken by the Manager with reference to the particular premium payable for covering the risk for driver and cleaner. If there is an ambiguity, I would hold the interpretation rather in favour of claimant to secure compensation against the Insurance Company.

7. Therefore, I will not find any reason to modify the award passed by the Tribunal and as such confirmed the same. The appeal stands dismissed.