**(2010) 08 P&H CK 0512**

**In the Punjab And Haryana At Chandigarh**

**Case No :** F.A.F.O. No. 15 of 1998

United India Insurance Co. Ltd. — APPELLANT

Vs

Santra Devi and Others — RESPONDENT

**Date of Decision :** 05-08-2010

**Acts Referred:**
Workmens Compensation Act, 1923 — Section 147(2), 3, 4

**Citation :** (2012) ACJ 179

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

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

K. Kantian, J.—The insurer is in appeal contending that the deceased was travelling on the tractor sitting on mudguard and the claim arose out of the death caused by the overturning of the tractor. It was brought out in evidence that the deceased was a workman under the owner of the vehicle. While I would hold in favour of the insurer that the workman could not have travelled on the mudguard but still if it ultimately results in death, the risk to the workman and the corresponding liability of the employer would require to be compulsorily covered by virtue of the provisions of section 147 (2) proviso. For a negligent act done by the workman, if it results in death, the employer shall still be liable u/s 3 of the Workmen''s Compensation Act. The application should have been filed only before the Commissioner for Workmen''s Compensation and this court being a court of appeal could still, therefore, consider the claimants'' entitlement to compensation for the death of the workman. The amount has been assessed by the Claims Tribunal as Rs. 1,68,000. The deceased was 35 years of age and the relevant factor that would be applicable would be 197.96. The Tribunal assessed the monthly income of the deceased as Rs. 1,500. Total amount of compensation worked out by the formula provided u/s 4 of the Workmen''s Compensation Act would still be not less than the amount awarded by the Tribunal. I do not, therefore, propose to make any modification of the award.

2. The insurer still urges for a point that the driver did not have a requisite licence to drive the tractor. He had a heavy transport vehicle licence endorsement and he was driving a tractor, which did not conform to the particular category. Learned counsel refers to a decision of the Hon''ble Supreme Court in Oriental Insurance Co. Ltd. v. Zaharulnisha, 2008 ACJ 1928 (SC), that a licence for higher category will not amount to a valid and effective driving licence. The insurer shall have, therefore, a right of recovery against the insured. The liability of the insurer shall be to satisfy the claim of the claimants and recover the same against the insured. The appeal is allowed to the above extent only.