

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5878 of 2015 (O&M)

Date of decision : December 08, 2015

The New India Assurance Company Ltd.Appellant

Versus

Madhu Bala and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Sidhu, Advocate
for the appellant.

LISA GILL, J

Instant appeal has been filed by The New India Assurance Company Limited impugning award dated 19.05.2015 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal') whereby compensation to the tune of ₹15,28,671/- has been awarded to respondents No. 1 to 4 on account of death of Siri Chand.

Brief facts, as detailed in the claim petition, are that Siri Chand (since deceased) was working with Haryana Roadways. He was engaged in repair work of the Haryana Roadways bus No. HR-

65-5699 on 11.08.2012 in the Haryana Roadways Workshop, Pehowa alongwith Balwant Singh and Brahampal. At about 6.00 p.m., other mechanics went to bring spare parts from the store, whereas Siri Chand remained engaged in the work being done by him under the bus. Respondent – Ram Niwas in a rash and negligent manner without exercising due care and caution started the bus. Siri Chand, who was still engaged in his work under the bus received fatal injuries and died on the spot. FIR No. 224 dated 11.08.2012 under Sections 279 and 304A IPC was registered at Police Station Pehowa. Post mortem examination report, Ex. P-8, proved that he died due to the injuries suffered in the accident.

Claimants i.e. widow and three children of the deceased preferred claim petition under Sections 166 and 140/141 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of ₹50 lakhs. Deceased was claimed to be 47 years old, employed as Apostor with Haryana Roadways earning ₹28,000/- per month. He was the sole bread earner of the family.

Claim was contested by the respondents. Insurance company, *inter alia*, took a plea that apart from the accident having occurred due to rash and negligent act of the deceased himself, accident took place in a workshop, which is not a public place. Family did not suffer any financial loss, therefore, claim petition be dismissed.

Following issues were framed by the learned Tribunal:-

1. Whether the motor vehicle accident dated 11.08.2012 is an outcome of rash and negligent driving of Bus

bearing registration No. HR 65-5699 by Ram Niwas (since deceased), respondent No. 1? OPP

2. Whether the respondent-driver of aforesaid vehicle was not having valid driving licence at the time of alleged accident? OPR
3. Whether the petitioners are entitled to compensation on account of death of Siri Chand, in the aforesaid accident, If so, in what amount and from whom? OPP
4. Relief.

Learned Tribunal on consideration of facts and circumstances concluded that Siri Chand died due to injuries suffered by him in the accident caused due to rash and negligent act on the part of driver of the offending bus.

Total sum of ₹15,28,671/- was awarded by the learned Tribunal as detailed below:-

Loss of dependency	₹10,03,671/-
Loss of consortium	₹ 1,00,000/-
Loss of Estate	₹ 1,00,000/-
Loss of love and affection (@₹1,00,000/- each to three children)	₹ 3,00,000/-
Funeral charges	₹ 25,000/-
Total	₹15,28,671/-

No addition was afforded on account of loss of future prospects keeping in view the fact that the deceased Siri Chand was 47 years old at the time of his death and the family would be entitled to receive full salary for a period of 11 years i.e. till the deceased would have attained the age of 58 if he had been alive. Notional age

of the deceased was worked out as 58 and multiplier of 9 was, accordingly, applied. There is no dispute regarding the last drawn salary of the deceased i.e. ₹24,782/-. In view of the dependants being four in number, deduction of 1/4th was applied keeping in view the observation of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another** 2009 (3) RCR (Civil) 77 and annual dependancy was worked out as ₹2,23,038/-. Loss of dependancy was worked out as ₹10,03,671/- while applying multiplier of 9.

Learned counsel for the appellant vehemently argues that the insurance company cannot be held liable as the accident in question took place in a work shop of Haryana Roadways which is not a public place. Vehicle in question was in the workshop for the purposes of repair. It was not road worthy. Furthermore, deceased cannot be treated to be third party. He is an employee not covered under the insurance policy. Therefore, insurance company is not liable to pay compensation in any manner.

I have heard learned counsel for the appellant and perused the file.

It has been specifically and rightly concluded by the Tribunal that mechanical failure of the bus in question is not alleged neither proved. There can be no doubt about the rash and negligent act on the part of the driver of the offending vehicle, who without exercising due care and caution to find out whether any mechanic was still present under the body of the bus thought it fit to drive off.

Place of accident is admittedly a workshop of Haryana

Roadways. However, to hold that insurance company is to be absolved of its liability on this ground is not justified. It is not that the access to the premises was totally banned. Provisions of Section 147 (1) (b) of the Act cannot be read to absolve the insurance company of its liability.

Full Bench of Bombay High Court in **Pandurang Chimaji Agale and another versus New India Life Insurance Company Limited and others 1988 (64) Company Cases 837** while referring to definition of 'public place' under the Act has held as under:-

“ The definition of “public place” under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation other purpose.

It is also necessary to bear in mind the distinction between the expression “right of access” and “access as of right”. The latter expression denotes a place where the members of public have a right of its use as members of public and as a matter of right, whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any member of the public on any ground which he chooses. In other words in the former case the right of the members of the public to use the place is restricted

compared to their right to use in the latter case. The definition under the Act uses the expression “right of access” as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind much of the controversy raised before us around the correct meaning of the expression “public place” loses its edge.

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The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of “public place” in Section 2 (24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.”

In the above said case, accident in question had taken place within the compound of factory. Insurance company was held liable to pay compensation.

Full Bench of Madras High Court in **United India Insurance Company Limited versus Parvathi Devi and others** **1999 ACJ 1520** has also expressed similar views.

Therefore, insurance company cannot be absolved on the above said ground.

Similarly liability by the insurance company cannot be denied simply by virtue of the deceased being an employee of Haryana Roadways. It is incorrect to suggest that the policy in question would cover only that employee, who is Conductor, Driver or Ticket Examiner of the vehicle and deceased being none of the above, insurance company cannot be saddled with responsibility. Siri Chand was undoubtedly an employee of Haryana Roadways but he was working from under the bus in question. In such a situation, appellant cannot escape liability by arguing that the deceased being an employee of Haryana Government is not covered under the insurance policy.

Decision dated 22.07.2003 of the Hon'ble Supreme Court in **Ramashray Singh versus New India Assurance Company Limited and others** in Civil Appeal No. 5147 of 2003 is not applicable to the facts and circumstances of the present case. In **Ramashray's** case (supra), insurance company was not held liable for death of the person employed by the vehicle's owner as a Khalasi of the vehicle. Deceased in the said case was held not to be passenger on the offending vehicle and furthermore it was observed that there was nothing on record to show that any additional premium was paid to cover the risk of the injury to khalasi/contractors.

Facts of the present case are different and distinguishable inasmuch as the deceased though an employee of Haryana Roadways was engaged in the repair of the offending vehicle. It is due to rash and negligent act on the part of bus driver that accident was caused due to which deceased lost his life. Liability

of the appellant company has been rightly fixed by the learned Tribunal.

Equally unacceptable is the contention that quantum of compensation awarded by the learned Tribunal is liable to be reduced inasmuch as compensation awarded to minor children is excessive or that learned Tribunal was bound to award the amount as assessed by the Hon'ble Supreme Court in the case of **Rajesh and others versus Rajbir Singh and others** 2013 (3) RCR (Civil) 170 and not **Vimal Kanwar versus Kishore Dan and others** (2013) 7 SCC 476. Merely because the Tribunal has first referred to decision of ***Rajesh*** (supra), it cannot be held that Tribunal was barred from awarding compensation in terms of ***Vimal Kanwar's*** case (supra). It is the duty of the Tribunals and Courts to ensure dispensation of just and proper compensation.

No other point has been argued.

In the factual matrix as above, learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 19.05.2015, which calls for interference by this Court at the instance of the appellate Company.

Consequently, this appeal is dismissed.

(Lisa Gill)
Judge

December 08, 2015
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