

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.156 of 2012 (O&M)

Date of Decision: December 15, 2017

Malti Devi and others

...Appellants

Versus

Amrit Lal and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ashwani Arora, Advocate for the appellants.

Mr.M.S. Longia, Advocate for respondent No.1.

Ms. Jaspal Kaur Gurna, Advocate for respondents No.2 to 5.

Mr. Harsh Aggarwal, Advocate for respondent No.6 – Insurer.

HARINDER SINGH SIDHU, J.

This appeal has been filed against the award dated 01.03.2011 of the Motor Accident Claims Tribunal, Rupnagar (hereinafter for short 'the Tribunal'), whereby, the claim petition filed by the appellants has been dismissed.

The appellants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 with the averments that on 27.10.2009, Phool Chand @ Ramu (Deceased), who was working as a skilled worker in the office of XEN Stores, Guru Gobind Singh Super Thermal Plant, Ropar was standing near railway crossing, Nuhon Colony, GGSSTP, Ropar for boarding the bus to Power Colony, Ropar. At about 5.10 pm, bus bearing registration No.PB-06-1172 came there. When the deceased was in the

process of boarding the bus, respondent No.1 drove away the same without waiting for the whistle of the Conductor. As a result, Phool Chand slipped from the bus, fell down and was crushed under the rear wheels of the bus. He sustained multiple grievous injuries. He was immediately taken to Civil Hospital, Ropar but died on the way. Alleging that the death was caused wholly due to the negligence of the driver of the bus, the claim petition was filed. It was stated that the accident was witnessed by Jaswant Singh son of Daya Singh. Other employees of GGST, Ropar had also gathered at the spot. DDR No.7 dated 28.10.2009 was lodged at Police Station Sadar Ropar.

Respondent No.1-driver of the bus filed written statement denying allegations. He claimed that the deceased sustained injuries due to his own fault. Respondents No.2 to 5, (the Punjab State Electricity Board - the owner of the bus and other officials of the Board) in their written statement claimed that Phool Chand fell down as he was trying to board the moving bus. Hence, he was solely responsible for his fall and there was no negligence on the part of the driver. It was also stated that appellants No.1 and 2 as also the alleged witness Jaswant Singh had themselves submitted a statement to the Police that the driver was not at fault. Respondent No.6 - the insurer of the bus also contested the claim.

The learned Tribunal framed the following issues as arising for determination in the case on 04.03.2010:-

- “1. Whether death of Phool Chand alias Ramu took place in a road accident on 27.10.2009 at about 5.10 PM near Railway crossing, main chowk Nuhon Colony and whether said accident caused due to rash and negligent driving of Bus No.PB-06-1172 by respondent No.1? If so, its effect?OPP*
- 2. If issue No.1 is proved, whether claimants being legal heirs of deceased entitled to get compensation? If so, to what amount and from whom?OPP*

3. *Whether respondent No.1 was not holding valid and effective driving licence at the time of alleged accident? If so, its effect?OPR*
4. *Whether Bus No.PB-06-1172 was not having valid RC/route permit and fitness certificate at the time of alleged accident? If so, its effect?OPR.*
5. *Relief.”*

In support of their claim, the appellants had relied on the statements of PW-2 Raghubir Singh and PW-3 Bhag Chand Sharma co-employees of the deceased. The learned Tribunal, however, did not consider their evidence as reliable for the reason that though these witnesses claimed to be present at the spot when the Police had arrived, but they stated that the Police had not recorded their statements and they also did not know if the Police had recorded the statement of any other person. The Tribunal observed that the Police on arriving at the spot of the accident would naturally record the statements of the witnesses present there and the very fact that their statements were not recorded goes to prove that they were not present at the spot and did not witness the accident, but were introduced at the behest of the claimants. They also did not present any record/proof regarding their journey in the bus on that date. Moreover, Jaswant Singh, who was the only eye witness referred to in the claim petition as being present at the spot, was not examined by the claimants. He, on the other hand, was examined by the respondents as RW-4. In his statement, he stated that Phool Chand (deceased) tried to board the bus after the Conductor had closed the door of the bus and it had started moving. It was also so stated in the DDR recorded on his statement. This version had also been corroborated by the RW-1, RW-3 and RW-5.

The Tribunal also considered that it was only after the filing of the claim petition on 26.11.2009 that the appellant Malti Devi (widow) filed

applications before the SSP alleging that the Police did not act properly regarding the incident. This fact was taken as an attempt by appellant No.1 to create evidence, for, if the DDR had been recorded incorrectly, then such applications should have been filed immediately thereafter and not after the filing of the claim petition. Moreover, two enquiries were conducted pursuant to these applications; one by the SHO, Police Station Sadar, Rupnagar, who submitted his report dated 06.07.2010 and another by DSP Bhupinder Singh. In both these reports, it was concluded that the driver of the bus was not at fault and the accident had occurred due to the negligence of Phool Chand in attempting to board the moving bus. Moreover, the appellant Malti Devi had herself submitted affidavit Mark-B stating that the death of Phool Chand was on account of natural causes without any fault on the part of the driver of the bus.

For all the aforesaid reasons the Tribunal decided issues No.1 and 2 against the appellants concluding that the deceased had died due to his own negligence and consequently dismissed the petition.

Challenging the above findings of the Tribunal on issues No.1 and 2, Mr. Ravinder Arora, learned counsel for the appellants submitted that the same are wholly erroneous and un-sustainable. His primary contentions were as under:

- (i) The joint statement RW-1/A disclaiming the negligence of the driver of the bus was recorded before the dead body of the deceased had been cremated. Considering that the appellant-Malti Devi, at that time would have been in a state of shock and unable to comprehend and understand what was being done the statement cannot be relied upon. Moreover, the appellant Malti Devi is an illiterate lady from U.P., does not know or understand the Punjabi language.

(ii) The enquiry reports of the SHO and the DSP could not have been relied upon as these reports were not proved before the Tribunal. In any case these reports cannot be determinative of the issue of negligence or otherwise, finding regarding which can only be given on the basis of evidence before the Tribunal.

(iii) The undue reliance on the DDR is also misplaced. The DDR was got recorded by Jaswant Singh RW-4 who admits that he did not know Malti Devi but he knew the driver of the bus. No implicit reliance can be placed on the DDR and the issue of negligence has to be determined on the evidence before the Tribunal.

(iv) The Tribunal erred in not relying on the statements of PW-2 and PW-3, who being employees of the Thermal Plant and daily commuters in the bus were natural witnesses.

Mr. Harsh Aggarwal, learned counsel for the Insurance Company supported the decision of the Tribunal. He stated that the DDR was promptly lodged by Jaswant Singh, who witnessed the incident and he stated that the deceased was trying to board the moving bus. The appellant-Malti Devi had herself sworn an affidavit Mark B before the Executive Magistrate that the driver of the bus was not at fault. In the claim petition, only Jaswant Singh was named as having witnessed the accident. No other person was mentioned. The said Jaswant Singh was not produced by the claimants, but by the respondents and he supported their version. Referring to the statement of PW-2 Raghubir Singh, where he states that the deceased was trying to board the bus from the front door, the learned counsel argued that this itself indicates negligence as the front door is not meant to board the bus but is meant for alighting of the bus. Moreover, though he claims to be present at the spot when the police arrived and also at the hospital, but

admits that neither was his statement recorded nor his signatures obtained. The joint statement RW1/A absolving the driver of negligence was also signed by the brother of the deceased and there is no reason for him to be lying about the death of his brother.

Mr. Longia, learned counsel appearing for respondent No.1 supported the findings of the Tribunal that the driver was not at fault and argued that in any event the liability would be of the insurance company as the vehicle was insured.

Heard learned counsel for the parties and perused the record.

PW-1 Raghbir Singh, who was working as Technician Grade-II, with GGSSTP, Ropar stated that on 27.10.2009 after completing his duty, he boarded the bus from near the office of Chief Engineer, GGSSTP, Ropar. At about 5.10 pm, when the bus reached near the railway crossing Nuhon Colony, it was stopped for taking in passengers, who were also the employees of GGSSTP, Ropar. The persons standing there started to board the bus. When Phool Chand was boarding the bus from the front window then the driver of the bus moved it without the whistle of the Conductor. Due to this Phool Chand fell on the road and was crushed under the rear wheels of the bus. He categorically stated that the accident took place due to rash and negligence driving of the bus by its driver. In his cross-examination, he stated that he used to go for his duty by bus. The bus of the Thermal Plant goes from Power Colony, Ropar to Thermal Plant, Ropar only. He stated that his statement was not recorded by the Police nor did he know whether the statement of any person was recorded by the Police. He stated that the police came to the spot after about 5 minutes of the accident

denied the suggestion that it was only on the whistle by the Conductor that the driver started to move the bus. He stated that he was sitting towards the Conductor side of the bus near front window and that 3/4 passengers had boarded the bus at the place of the accident. He admitted that he was not a summoned witness but had come on asking of the claimant Malti Devi. He categorically denied that the deceased tried to board the bus when it was moving and the handle of the bus was broken.

PW-3 Bhag Chand Sharma in his examination-in-chief stated that he is working as Assistant J.E. (Telephone Mechanic) in the plant. On 27.10.2009, after finishing his duty, he was standing near the railway crossing, Nuhon Colony, GGSSTP, Ropar for boarding the bus to Power Colony Ropar. At about 5.10 pm, the bus reached there and stopped for taking in the passengers. There were many persons standing there for boarding the bus. Phool Chand deceased was also standing there for boarding the bus. When Phool Chand was boarding the bus from the front window then driver of the bus moved the bus without the whistle of the conductor in a rash and negligent manner, because of which, the deceased fell down and was run over by the rear wheels of the bus. In his cross-examination, he stated that he was towards the Conductor side of the bus near front window. 3-4 passengers had boarded the bus at the place of occurrence. He categorically denied the suggestion that it was on the whistle by the conductor that the driver had started to move the bus. He denied that the deceased was trying to board the bus when it was moving and as the handle of the bus was broken the deceased fell down on the road prior to entering the bus.

While on this statement it is significant that this witness has

categorically stated that the deceased was among the persons who were standing waiting to board the bus. He was not cross examined on this point and no suggestion was put to him that this fact was false or that the deceased was not present at the spot but had come running from a distance to board the bus after it had started moving.

The appellant-Malti Devi PW-4, in her affidavit in examination-in-chief has stated that many persons had gathered at the spot after the accident and they were all employees of GGSSTP, Ropar. Some of them were members of the driver union of the Thermal Plant and it was on account of their influence and in connivance with the Police, the case was not registered against the driver of the bus. She has stated that she belongs to U.P. and is unable to read and write the Punjabi language. She deposed that the bus driver and other drivers and members of the driver union had obtained her signatures on blank papers when her husband had died and she was in deep mourning. In her cross examination, she stated that the police had recorded her statement but took no action thereon. She identified her signatures on the statement before the police. Further, though she candidly identified her signatures on the affidavit Mark 'B', but she disclaimed knowledge of the contents thereof. She admitted that she had appeared before the Executive Magistrate, Ropar to attest the affidavit along with the driver but asserted that she did not know the contents of the affidavit. She denied that her statement was read over to her by the police. She put her signatures on it without reading its contents. She reiterated that she did not know the contents of the affidavit. The affidavit was got signed from her just as her earlier statement was got signed from her.

working as a carpenter in Thermal Plant, Ropar appeared as RW-1. He stated that on 27.10.2009 at about 5.10 pm, he was standing near railway crossing bus stop Thermal Plant, Ropar. After the bus stopped at the bus stop, 4/5 passengers boarded the bus and its started moving. Phool Chand deceased tried to board the moving bus from the front window, he could not catch the handle of the moving bus properly, because of which, he fell down and came under the rear wheel of the bus. In his cross-examination, he admitted that the joint statement RW-1/A was recorded by the police on 27.10.2009. The brother of the deceased also signed the joint statement. He admitted that the dead body of Phool Chand was at his house when the statement was recorded. He admitted that it was recorded before cremating the dead body.

RW-3 Pardeep Kumar, Conductor of the bus stated that 4/5 passengers had boarded the bus at the bus stop of Thermal Plant near railway crossing. Thereafter, he closed the door of the bus, blew the whistle and the bus started moving. After the bus had moved 4/5 yards ahead a jolt was felt. The bus was immediately stopped. When the door of the bus was opened, he saw that Phool Chand had come under the rear tyre of the bus. He asserted that Phool Chand was trying to board the moving bus and could not catch the handle and fell down. In his cross-examination, he stated that the conductor seat is on the last seat of the bus. Front door of the bus was closed and the passengers used to board the bus from back door. There was no mirror on left side of bus towards driver side. He stated that he had not seen that the deceased was trying to board the moving bus.

RW-4 Jaswant Singh stated that he was working as a driver in

GGSSSTP, Ropar. He asserted that at about 5.10 p.m. he was standing at the

bus stop, Thermal Plant Ropar near railway crossing for boarding the bus. When the bus came, 4-5 passengers boarded the bus. The conductor closed the door of the bus and thereafter the bus started moving. Phool Chand tried to board the moving bus from the front window. As he could not catch the handle of the moving bus he fell down and got crushed under the rear wheels of the bus. The injured was taken to the Civil Hospital. His statement was recorded by the police. The DDR was recorded on 28.10.2009 on his statement. He asserted that Amrit Lal driver of the bus was not at fault. In his cross examination, he stated that his statement was recorded by the police at the Power Colony, residence of the deceased. He stated that two/ three persons boarded the bus at the spot. Four/ five persons were standing with him, when the occurrence took place.

Amrit Lal, Driver of the bus, appeared as RW 5. He stated that when the bus reached the bus stop near the railway crossing near Nuhon Colony, Ropar, some employees who usually board the bus from that place were standing there. After four/five employees had boarded the bus, the window of the bus was closed, the conductor blew the whistle and the bus started moving slowly. The bus had only gone about 10/15 yards, that the employees standing outside started shouting and then he came to know that Phool Chand had slipped while trying to board the moving bus and was crushed under the rear wheel. In his cross examination, he stated that there was no mirror in the bus towards the conductor side. He admitted that from his seat both the doors of the bus were visible. He had not seen Phool Chand when he was trying to board the moving bus. He also stated that there is handle on both doors of the bus to board the bus. The conductor was sitting in the bus on his seat. The conductor did not get down from the bus when it

stopped the bus at the bus stop. He denied that he was deposing falsely.

From the above evidence, it is clear that RW1 Harmesh Singh Dhiman, RW3 Pardeep Kumar -the conductor, RW4 Jaswant Singh- a co-employee of the deceased and RW5 Amrit Lal driver of the bus have deposed that the deceased Phool Chand was trying to board the moving bus, he slipped, fell down and was crushed under the rear wheel of the bus. Resultantly, his death is attributable to his negligence alone and the bus driver was not at fault. There is also the DDR got recorded by RW4 Jaswant Singh who stated that the driver of the bus was not at fault. Further, there is the joint statement RW1/A of RW1 Harmesh Singh jointly with Nachhatar Singh and Raj Kumar which also states that the driver was not negligent. Further the enquiry reports Ex.RW2/A and Ex.RW2/B which were conducted by the SHO P.S. Sadar Rupnagar and DSP Bhupinder Singh respectively have also been relied upon to support the plea of no negligence on the part of the driver of the bus. The affidavit dated 6.11.2009 'Mark B' of Malti Devi, wherein, she stated that her husband Phool Chand died on 27.10.2009 as he slipped while trying to board the thermal plant bus and affirmed that her husband had died due to sudden and natural causes and Amrit Lal, the driver of the bus was not at fault and also stated that she did not wish to initiate any legal action against Amrit Lal driver, is another substantial piece of evidence relied on by the respondents. The learned Tribunal has been persuaded by the above evidence to return a finding against the appellants and in favour of the respondents.

I have carefully gone through the above evidence but am not able to agree with the finding of the Tribunal on this issue.

Chand was boarding the bus at the bus stop near the railway crossing Nuhon Colony from the front window, the driver started the bus without the whistle by the conductor, because of which Phool Chand fell down on the road and was crushed under the rear wheel of the bus. PW2 Bhag Chand Sharma deposed that he was among the employees who were standing to board the bus when it stopped near the railway crossing Nuhon Colony. He categorically stated that Phool Chand was also standing there. The persons started boarding the bus. When Phool Chand was boarding the bus from the front window, the driver of the bus moved the bus without waiting for the whistle of the conductor as a result of which Phool Chand fell and was crushed under the rear wheel of the bus. It is important to note that PW2 had categorically stated that Phool Chand was amongst the passengers/employees standing to board the bus. He has not been cross examined on this point. Hence, it has to be accepted that Phool Chand was standing along with the other employees waiting to board the bus. If so, it was the duty of the Conductor to ensure that the whistle/ signal is not given to move the bus before all the passengers have safely boarded the bus. If the bus has started moving without all those standing having safely boarded the bus, and a passenger falls down because the bus started moving while he was yet boarding, the negligence would be only of the driver and conductor of the bus. While on this aspect it is also very important to note that none of the witnesses for the respondents have deposed that Phool Chand was not present among the passengers waiting to board the bus or that any one of them had seen Phool Chand coming running from some distance to board the bus even though it had started moving. In the face of this, I am not

inclined to hold in favour of the respondents solely on the bald statement of

the witnesses of the respondents that Phool Chand fell down while boarding the moving bus as he could not hold the handle of the front door.

The learned Tribunal has discarded the testimony of both PW2 and PW3 on the ground that their presence at the spot is belied by the fact that their statements were not recorded by the police when it reached the spot despite their claim of being present there. With respect, I find myself unable to agree with this view of the Tribunal. Many persons had gathered at the spot after the accident, which included members of the drivers' union etc. The police may not record the statement of all those present or note the presence of all those who were present at the spot. The fact that the statement of a person who claims to be present at the spot is not recorded by the police cannot be a ground for disbelieving his presence there, if the evidence is otherwise credible and the presence is properly explained. PW2 and PW3 are employees of the GGSSTP, Ropar. They were to board the bus after office hours. Their presence at the spot, like that of other employees, who deposed in favour of the respondents, is but natural. Moreover, none of the respondents have deposed regarding their not being present at the spot or not being in the bus on that date.

The other reason given by the learned Tribunal for discarding their evidence that they had no record with them regarding their journey in the bus on the day of the accident also does not appear to be sound. It is not denied that PW2 and PW3 are employees of the GGSSTP Ropar. PW2 and PW3 have stated that they had boarded the bus after completing their duty. It is not unusual for them to be travelling by the Thermal Plant bus for their journey home from the office. They were not expected to maintain records of their journeys to and from office. Moreover, even as argued by the

counsel for the respondents, it was a free ferry service provided by the Thermal Plant for the benefit of its employees. In this situation, it is incomprehensible as to what record could be maintained by the employees regarding their journey.

Thus, in my view the Tribunal was not justified in discarding the testimony of PW2 and PW3. PW2 was working as Technician Grade-II with GGSSTP, Ropar. PW3 was working as Asstt. J.E. (Telephone Mechanic) in GGSSTP, Ropar. Their testimony merits acceptance.

The reliance by the learned Tribunal on the enquiry reports Ex.RW2/A and Ex.RW2/B which were conducted by the SHO PS Sadar Rupnagar and DSP Bhupinder Singh to hold that the driver was not at fault is also not justified especially when the officers who conducted the enquiry did not depose before the Tribunal. In deciding the claim petition, the Tribunal is concerned only with the evidence adduced before it and not with the contents of any inquiry report. I am fortified in the aforesaid view by a decision of this Court in **Commandant and another vs. Saroj Rani and others**, 2013(2) PLR 346. In that case this Court held as under:

“11. The Court is not concerned with the report submitted by the inquiry officer appointed by the appellant as regards the rash and negligence attribute to the driver of the offending vehicle. Even otherwise, the inquiry officer was not established to speak about the inquiry reports exhibited before the courts. The Court is concerned with the evidence adduced before the Court and not the statement given before the inquiry officer. The Tribunal has rightly ignored the inquiry report exhibited in this case. Therefore, I have no hesitation to hold that the Tribunal has rightly held that the accident took place on account of rash and negligent driving of the driver of the offending vehicle namely Swaraj Mazda.”

In another case, **Punjab State Bus Stand MGNT Company**

Limited vs. Harwinder Kaur and others 2013(45) RCR(Civil) 862, while dealing with the case of the claimants seeking compensation on account of the death of one Dharam Pal, who died while boarding from bus, as driver, all of a sudden, moved the bus, it was held that merely the fact that the investigating officer had prepared cancellation report would not prove that the statement of a witness in the claim petition, is not believable.

The Joint Statement Ex.RW1/A signed by some persons on 28.10.2009 to the effect that there was no fault or negligence of the driver of the bus, in my view, also does not disprove the case of the appellants. Moreover, out of the more than ten signatories to this joint statement only one i.e., Harmesh Singh has testified before the Tribunal. It is not mentioned that any of the other signatories were eye witnesses to the incident. In the absence of their testimony before the Tribunal, it is not possible to discern as to what was the basis of their assertion that the driver of the bus was not at fault and thereby to rely on that joint statement to disprove the claim of the appellants and to exonerate the bus driver of all negligence.

The learned Tribunal has further wrongly proceeded to place implicit reliance on the affidavit 'Mark B' of the appellant Malti Devi, wherein, she asserted that her husband died due to accidental and natural causes and Amrit Lal, the driver of the bus, was not at fault and also that she did not wish to initiate any legal action against Amrit Lal driver. The affidavit is in Punjabi. The appellant is an illiterate woman from U.P. She does not know Punjabi. She asserted that the contents of the affidavit were not read out to her. Even if she is disbelieved on that count and it is

affidavit, that of itself would not bind her to her assertions in that affidavit. The Tribunal would have to decide the claim petition on the evidence before it. It has been held that a person may have decided not to prosecute for criminal negligence but that did not mean giving up his right to pursue for civil liability as well. In this context in **Chhindo Devi and another vs. K.C.Oil Mills and others**, 2014(4) PLR 426, it was observed as under:

“2. A statement giving up his right not to prosecute for criminal negligence cannot amount to an admission that there was also no civil liability to sustain a claim for compensation. In this case, the person who was said to be an eye witness and at whose instance the DDR had been registered resided from the statement that he had purportedly made and gave evidence to the effect that the accident was the result only of the negligence of the driver of the truck. The court was bound to examine the evidence and assess the issue of negligence.”

The Tribunal after noting that it was only after the filing of the claim petition on 26.11.2009 that the appellant Malti Devi (widow) filed applications before the SSP alleging that the Police did not act properly regarding the incident, concluded that this was only an attempt by appellant No.1 to create evidence, for, if the DDR had been recorded incorrectly, then such applications should have been filed immediately thereafter and not after the filing of the claim petition. I am not persuaded to hold this fact against the appellant. Firstly, the appellant Malti Devi in her statement has stated that after the accident a number of members of the drivers' union had gathered at the spot and it was on account of their influence that FIR was not recorded. When she got to know that only DDR was lodged she moved applications before the SSP Ropar. She is an illiterate lady from U.P. who had suddenly lost her husband, she would take time to recover from her shock. Secondly, as held in **Chhindo Devi 's** case (supra), a person may

against him in his claim for compensation.

Both the conductor and driver of the bus appearing as RW3 and RW5 had stated that the bus had just started moving when the accident took place. According to the conductor the bus had gone only 4/5 yards and according to the driver the bus had gone only 10/15 yards when the deceased slipped. RW5 Amrit Lal-driver in his cross-examination stated that there was no side mirror in the bus towards the conductor side, but he admitted that from his seat both the doors of the bus were visible. He stated that he did not see Phool Chand when he was trying to board the bus. It is expected of both the driver and the conductor to be extra vigilant when the bus starts moving from a bus stop that all the passengers have safely boarded. The fact that despite being in a position to see, the driver of the bus did not notice the deceased boarding the bus points to his negligence. In similar circumstances where the driver was in a position to see a passenger boarding the bus, but did not notice him and the passenger fell and suffered injuries it was held that the driver was negligent. (**U.P. State Road Transport Corporation and others Vs. Rajesh Kumar and others** 2009 (45) RCR (Civil) 879).

For all the aforesaid reasons, the findings of the Tribunal on issues No.1 & 2 are set aside. It is held that the accident had occurred due to the rash and negligent driving of Bus No.PB-06-1172, wherein, Phool Chand lost his life. The appellants being his widow and children are entitled to compensation under the Motor Vehicles Act.

On issues No.3 & 4, the learned Tribunal held that respondent No.1 was holding valid and effective driving license and the bus was having valid registration certificate and fitness certificate and it was duly insured

with respondent No.6. So, both the issues, accordingly, were decided against respondent No.6.

Amount of Compensation :

PW1 Shakti Prasad, Assistant Store Keeper, GGSSTP, Ropar deposed about the salary and other emoluments of the deceased. He stated that the deceased Phool Chand was working as skilled worker in the office of XEN (Stores), M.M. Circle-I Guru Gobind Super Thermal Plant, Ropar. He proved the Salary certificate of deceased Ex.P-1. As per Ex.P-1 he was drawing gross salary of Rs.13,928/- per month. Besides, he was drawing Rs.4,244/- per month as generation incentive. In his cross examination, Shakti Prasad stated that the generation incentive was not permanent. It may differ due to generation of electricity.

It has been held in **Sarita and another vs. General Manager, Haryana Roadways and others**, 2002(4) RCR (Civil) 370, that an incentive, though it may increase or decrease, is a part of wages and is to be included in the salary for determining compensation under the Motor Vehicles Act. Accordingly, the generation incentive payable to the deceased has to be included in the salary for determining the loss of income.

As per the post mortem report, the deceased was 42 years old. The deceased had four dependants i.e. widow and three children.

In the light of the above and the judgment dated 31.10.2017 of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** SLP (Civil) 25590 of 2014, the compensation payable is assessed as under:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income @ Rs.18172/- (13928+4244) per month	2,18,064/-per annum
(ii)	30% of above (i) to be added as future prospects (deceased aged 42 yrs.)	Rs.218064+65419 = 283483/-
	Taxable income after General Deduction (Rs.283483-160000)	Rs.123483/-
	Income tax payable at the rate of 10% for Rs.123483/-	Rs.12348/-
	Net annual income after deduction of income tax (283483-12348)	2,71,135/-
	1/4 th of (i) deducted as personal expenses of the deceased (four dependants)	Rs.271135-67783 = 203352/- per annum
(iv)	Compensation after multiplier of 14 is applied	Rs.203352 x 14 = 28,46,928/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	<i>Total</i>	<i>Rs.29,16,928/-</i>

The appellants are awarded compensation of Rs.29,16,928/-, payable by the respondent No.6 – insurer along with interest at the rate of 7.5% per annum from the date of filing of claim petition till realisation. The amount awarded under the head of 'loss of consortium' be paid to the widow of the deceased (appellant No.1). Out of the remaining compensation, 50% be paid to the widow of the deceased (appellant No.1) and 50% be paid to the children of the deceased (appellants No.2 to 4) in equal shares.

December 15, 2017

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No