

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:20.9.2018

FAO No. 3242 of 2004

Ranbir Chand

---Appellant

vs.

Tarsem Lal and others

---Respondents

FAO No. 3577 of 2004

Jagan Nath

---Appellant

vs.

Tarsem Lal and others

---Respondents

FAO No. 3578 of 2004

Barto

---Appellant

vs.

Tarsem Lal and others

---Respondents

FAO No. 3579 of 2004

Bimla Devi

---Appellant

vs.

Tarsem Lal and others

---Respondents

FAO No. 3580 of 2004

Rachna Devi

---Appellant

vs.

Tarsem Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate
for the appellant in all the appeals

Mr. A.P.Kaushal, Advocate
for respondent No. 2 in all the appeals

Mr. Neeraj Khanna, Advocate
for the New India Assurance company Limited-respondent
No. 3 in FAO Nos. 3577, 3578, 3579 and 3580 of 2004

Mr. Paul S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No. 3 in FAO- 3242 of 2004

Rekha Mittal, J.

This order will dispose of FAO Nos. 3242, 3577, 3578, 3579 and 3580 of 2004 as these have emerged out of the same award dated 9.4.2004 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short “the Tribunal”) whereby compensation has been awarded on account of death of Maya Devi, injuries sustained by Jagan Nath, Barto and Bimla Devi and death of Piara Singh in a motor vehicular accident that took place on 19.8.2000 when several persons including the aforesaid injured and deceased had gone to district Bathinda to pay obeisance and were travelling in truck No. HPG-3321 and the truck fell in the ditches on account of driver having lost control.

FAO No. 3242 of 2004

Claimant Ranbir Chand has prayed for enhancement of

compensation in regard to death of Maya Devi.

The Tribunal has awarded compensation of Rs. 1,35,000/-,
detailed hereunder:-

Monthly income of the deceased	Rs. 1500/-
Deduction for personal expenses	1/3 rd
Multiplier	11
Loss of dependency	Rs. 1,32,000/-
Funeral expenses	Rs. 3000/-

Taking into consideration minimum wage available at the relevant time coupled with that a housemaker has multifarious duties to perform, value of services of deceased is assessed at Rs. 2000/- per month. As the deceased was in the age bracket of 46-50, admissible multiplier is 13. There would be no deduction for personal expenses in the light of Division Bench judgment of this Court **Paramjit Singh and another vs. Dilbagh Singh alias Bagga and others 2014(4)R.C.R.(Civil)895**. In this manner, loss of dependency is calculated at Rs.3,12,000/- [2000 x 12 x13].

A sum of Rs. 15,000/- is payable towards funeral expenses.

Total compensation is Rs. 3,27,000/- and the additional amount is Rs. 1,92,000/- (3,27,000-1,35,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO Nos. 3577, 3578 and 3579 of 2004

With regard to injuries sustained by Jagan Nath, Barto and Bimla Devi, counsel for the appellants is not in a position to make any worthwhile submissions warranting enhancement of compensation over and above what has been allowed by the Tribunal. Accordingly, claim of the

injured for enhancement of compensation is rejected.

Disposed of accordingly.

FAO No. 3580 of 2004

With regard to death of Piara Singh, claim has been preferred by his widow Shmt. Rachna Devi.

The Tribunal has awarded compensation of Rs. 1,00,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 2400/-
Deduction for personal expenses	1/3 rd
Multiplier	5
Loss of dependency	Rs. 96,000/-
Funeral expenses	Rs. 4000/-

Findings of the Tribunal with regard to income of the deceased and 1/3rd deduction for personal expenses are correct and affirmed. As the deceased was in the age bracket of 61-65 years, admissible multiplier would be 7. In view of the above, loss of dependency is calculated at Rs.1,34,400/- [2400 x 12x 7=2,01,600-67,200 (1/3rd)].

Under conventional heads, claimant shall be entitle to Rs. 70,000/-, detailed hereunder :-

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 2,04,400/- and the additional amount is Rs. 1,04,400/- (2,04,400 -1,00,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

Before parting with the judgment, it is appropriate to point out that the insurance company has been exonerated of liability to pay compensation as the victims were gratuitous passengers travelling in a goods vehicle. As a consequence, liability to pay compensation has been fastened upon driver and owner of the offending vehicle, Truck No. HPG-3321.

Counsel for the appellant(s) has not disputed factual findings recorded by the Tribunal that the victims were gratuitous passengers travelling in a goods vehicle and the insurance policy obtained by the owner does not cover risk of injury or death of such passengers. He has also not disputed the law laid down by Hon'ble the Supreme Court in **New India Assurance Company Limited vs. Asha Rani, 2003(1) R.C.R.(Civil) 671** that the insurance company is not liable to pay compensation for injury or death of a gratuitous passenger travelling in a goods vehicle. In **Asha Rani's case (supra)**, Hon'ble the Apex Court set aside the judgment **New India Assurance Company vs. Sat Pal and others, 2001(1) R.C.R.(Civil) 274**.

Counsel for the appellant has vehemently argued that even if the insurance company is not liable to pay compensation in discharge of liability under the contract of insurance, insurance company is liable to pay compensation to the claimants but with a right of recovery against the owner/insured of the vehicle in question. To support his contention, he has referred to judgments of Hon'ble the Supreme Court **M/s National Insurance Company Limited vs. Baljit Kaur and others 2004(1) R.C.R. (Civil) 722, Manager, National Insurance Company Limited vs. Saju P.**

Paul and another 2013 (1) RCR (civil) 869, Manuara Khatun and others vs. Rajesh Kr. Singh and others alongwith connected appeal, 2017 (2) R.C.R. (Civil) 108. Further reference has been made to judgment of the Jammu and Kashmir High Court **United India Insurance Company Limited vs. Karam Chand and others 2012 ACJ 1661.**

Counsel representing the insurance company, on the contrary, has strongly refuted contention of the appellant(s) that as no liability to pay compensation qua injury or death of a gratuitous passenger travelling in a goods vehicle exists in the eye of law, there is no question of adopting the principle of pay and recover, in the circumstances of the present case. It is further argued that judgments of Hon'ble the Supreme Court, relied upon by counsel for the appellant(s) do not lay down ratio decidendi that insurance company is liable to pay compensation qua injury or death of a gratuitous passenger travelling in a goods vehicle when admittedly, no such liability exists in the light of three Judge Bench decision of Hon'ble the Apex Court in **Asha Rani's case (supra)**. It is further argued that law laid down by larger bench of Hon'ble the Supreme Court has primacy over subsequent decision by Bench of lesser or equal strength. A Bench of lesser quorum cannot doubt correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. For this purpose, reliance has been placed upon **Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another 2005(2) SCC 673**. Reference has

also been made to judgment of Hon'ble the Supreme Court **Indian Bank vs. ABS Marine Products Private Limited 2006(2) R.C.R. (Civil) 624.**

I have heard counsel for the parties at length and carefully gone through the judgments cited at Bar.

Indisputably, the question with regard to liability of the insurance company to pay compensation in respect of injury or death of a gratuitous passenger traveling in a goods vehicle came up for consideration before a three Judge Bench of Hon'ble the Supreme Court in **Asha Rani's case (supra)**. Paras 16 to 20 of the judgment, relevant in the present context, are quoted thus:-

“16. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

17. Furthermore, sub-clauses (i) of clause (b) of sub-section (1) of [Section 149](#) speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

18. An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in [New India Assurance Company v. Satpal Singh & Ors.](#) [(2000) 1 RCR (Civil) 274] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy where for even no premium is required to be paid.

19. We may consider the matter from another angle. [Section 149](#) (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh's case (*supra*).

20. For the foregoing reasons, I am in respectful agreement with My Lord the Chief Justice of India that the decision of this Court in [New India Assurance Company v. Satpal Singh & Ors.](#) [(2000) 1 SCC 237] has not laid down the law correctly and should be overruled.”

The Court has held that as provisions of the Motor Vehicles Act, 1988 do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable to pay compensation. Hon'ble Judges have expressed their agreement with his Lordship Hon'ble the Chief Justice of India that decision of this Court in **Satpal Singh and others' case (*supra*)**

has not laid down the law correctly and should be overruled.

In **Baljit Kaur and others' case (supra)**, the ratio laid down in **Asha Rani's case (supra)** was affirmed. However, in para 21 of the judgment, the court has held, reads thus:-

“The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of [Section 168](#) of the Motor Vehicles Act, 1988 in terms

whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.”

Still later, in **Manager, National Insurance Company Limited vs. Saju P. Paul and another's case (supra)**, Hon'ble the Supreme Court has held in para 24 and 25 to the following effect:-

24. In National Insurance Company Ltd. v. Parvathneni & Another [2009(4) RCR (Civil) 269: SLP (C).CC No. 10993 of 2009], the following two questions have been referred to the larger Bench for consideration:

(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?”

25. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur and Challa Bharathamma should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in

1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of Challa Bharathamma.”

In **Manuara Khatun and others' case (supra)**, a two Judge Bench of Hon'ble the Supreme Court by relying upon **Saju P. Paul and another's case (supra)** has held in paras 20 and 23, quoted thus:-

20) We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of

the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

23) Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

With utmost respect and humility, the observations in the aforesaid judgments, in my considered opinion, neither lays down any ratio nor make obiter observation that though the insurance company is not legally liable to pay compensation in regard to a gratuitous passenger travelling in a goods vehicle but still the insurer is required to pay compensation though it has right of recovery against the owner/insured of the vehicle. On due consideration of the aforesaid extracts from various judgments, it can safely be held that Hon'ble the Supreme Court, in view of peculiar facts and circumstances and while exercising its powers under Article 142 of the Constitution of India, had directed the insurance company to pay compensation to the claimants though it is not legally liable to do so but the insurance company has been given right of recovery against

the insured. In this view of the matter, I find it difficult to accept contention of the appellants that the insurance company has liability to pay compensation qua injury or death of a gratuitous passenger travelling in a goods vehicle. As such, I do not find an error much less illegality in conclusion of the Tribunal exonerating the insurance company of liability to pay compensation. Accordingly, contention of the appellants for issuance of direction to the insurance company to pay compensation to the claimants and thereafter to recover from owner is not meritorious and accordingly rejected. I would hasten to add that though the present case pertains to an occurrence that took place in the year 2000 and the appeals are pending since 2004 and came up for hearing now, there is nothing on record suggestive of the fact that the claimants filed execution applications before the Tribunal but they remained unsuccessful to recover compensation from owner or/and driver of the vehicle in question. In this view of the matter, the claimants cannot be heard to say that they are not able to realize compensation for the past 14 years, in view of the award passed by the Tribunal in 2004.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms. Claimants shall be entitle to recover compensation from the owner and driver of the offending vehicle who will be jointly and severally liable to pay the same. No order as to costs.

(Rekha Mittal)
Judge

20.9.2018
paramjit

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