

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1626 of 2015

Date of Decision: 01.02.2018

ICICI Lombard General Insurance Company

....Appellant

V/S

Ajay and Others

....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Manjesh Singh, Advocate, for
Mr. Jasbir Singh Mor, Advocate,
for respondent Nos. 2 & 3.

RITU BAHRI, J.(Oral)

CM No. 4777-CII of 2015

For the reasons mentioned in the application same is allowed
and delay of 27 days in filing the appeal is condoned.

Accordingly, present application stands disposed of.

Main Case :

The present appeal has been filed by the appellant against the
Award dated 11.09.2014 whereby respondent No.1-Ajay has been awarded
compensation of Rs.1,96,250/- along with interest @7.5% p.a., by the
learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal')
on account of injuries sustained by him in road accident which took place
on 08.03.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 08.03.2011, Claimant-Ajay

(respondent No. 1 in the present case) went to bus stand, Rohtak to board a bus for going to his village Budha Khera in District Jind. There he found a bus bearing No. HR-56A/0096 ready for going to Jind. It was over crowded. The driver and the conductor asked him and 10/12 other passengers to sit on the rooftop of the bus. Accordingly, he and other passengers sat on the rooftop of the bus. Rajpal respondent No. 1 was the driver and Satbir respondent No.2 was the conductor. At about 1.15 p.m., the bus left the bus stand and going to Jind. On the way, when the bus was passing from the bye-pass of Rohtak, he and other passengers who were sitting on the rooftop of the bus in question got in touch with electric live wires and received burn injuries on account of electrocution. They were taken to PGIMS, Rohtak. Claimant-respondent Ajay in this case had sustained burn injuries on his face, neck, upper limbs and legs. He remained admitted up to 23.04.2011 in PGIMS, Rohtak. During this period, he was operated upon for the injuries. In this regard FIR No. 161 under Sections 279, 337 read with section 34 IPC was registered against driver and the conductor in police station, Jind.

Consequently, appellant-Ajay filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused due to fault of driver and conductor being respondent Nos. 1 and 2, respectively. At the time of accident claimant was 23 years of age and was student of B.A. Ist year and the injuries have ruined his entire career.

This finding was rightly given on the basis of FIR, and others

documentary evidence led by the claimant. As the time of accident claimant was not earning anything, his notional income taken as Rs. 15,000/- per annum by the Tribunal. Since he has suffered 75% disability, annual loss of income would be Rs.11,250/-being 75% of Rs.15,000/- as provided under Clause 5(a) of the Schedule. Keeping in view his age multiplier of 17 would be applied. Tribunal awarded compensation to the claimant as under:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
1	Pain and Suffering	Rs.5,000/-
2	Loss of income	Rs. 1,91,250/-
	Total Compensation awarded	Rs. 1,96,250/-

Feeling dissatisfied with the Award of Tribunal, appellant file the present appeal.

In the present appeal parties are not in dispute with the findings of issue No. 1 that accident took place due to the fault of respondent Nos. 1 and 2.

Learned Counsel for the appellant challenge the Award only on one ground that the liability of the Appellant-Insurer does not occur because the respondent-claimant was travelling on the roof of the bus. Since the passengers are not permitted to travel on the roof of the bus, the respondent-claimant cannot claim compensation due to the injuries suffered by him.

I have heard learned counsel for the parties and perused the record.

However, to prove the aspect of learned counsel for the appellant, this court has put reliance upon in case **The Oriental Insurance Co. Ltd. Versus Smt. Meena Devi and Others** 2012(2) RCR (Civil) 334, wherein it has been held that travelling on the roof top of the bus, does not absolve the Insurance Company of its liability and the Insurance Company is

liable to indemnify the insured to pay the compensation even in respect of the claims arising out death or injury suffered by the passengers travelling on the roof top. No contrary judgment has been set aside by the appellant in the present case.

Hence, Impugned Award, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

01.02.2018
Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *No*