

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

**FAO-5754-2014 (O&M)
Reserved on 27.07.2018
Date of Decision:13.08.2018**

Jasvir Singh @ Jassa & another

... Appellants

Versus

New India Insurance Company & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Akashdeep Singh, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate
for respondent No.1/Insurance Company.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

A claim petition filed under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Faridkot came to be decided vide award dated 14.05.2014 and a compensation amount of Rs.7,37,000/- along with interest at the rate of 6% per annum from the date of filing of claim petition till realization was granted in favour of the claimants.

2. The instant appeal has been preferred by the driver and owner of the offending vehicle assailing the award dated 14.05.2014 to the extent recovery rights in relation to the compensation amount have been granted to respondent No.1/New India Insurance Company.

3. Brief facts of the case are that on 09.03.2013, Jaspal Singh

along with his wife Kulwinder Kaur and brother Harmesh Singh had boarded bus bearing registration No.PB-04-M-9785 driven and owned by the appellants herein. In the claim petition, it was asserted that when the bus reached near a particular village, Jaspal Singh had climbed the roof of the bus to bring down certain articles and at such point of time, driver Jasvir Singh (appellant No.1 herein) suddenly accelerated the bus and on account of which Jaspal Singh fell down on the pucca portion of the road and received multiple injuries. He was initially taken to Medical College, Faridkot and thereupon to Jha Hospital, Bathinda but he succumbed to his injuries on 13.03.2013. FIR No.24, dated 10.03.2013 was got registered at Police Station Bajakhana.

4. Claim petition was filed by widow, minor son, minor daughter and father of deceased Jaspal Singh seeking compensation to the extent of Rs.30 lakhs on account of rash and negligent driving of Jasvir Singh and which led to the accident and death of Jaspal Singh.

5. Upon the pleadings of the parties, the following issues were framed by the Tribunal:

“(1) Whether Jaspal Singh died in a motor vehicular accident which took place on 9.3.2013, on account of rash and negligent driving of bus bearing number PB-04M-9785, driven by respondent No.1 Jasvir Singh? OPA

(2) If issue No.1 is proved, whether the claimants are entitled to seek compensation, if so, to what extent and from which of the respondent? OPP

(3) Whether the claimants have no locus standi to file the present claim petition? OPR

(4) Whether the claim petition is not maintainable? OPR

(5) Whether respondent No.1 was no holding valid and effective driving license, at the time of accident? OPR

(6) Relief.”

6. On issue No.1, findings were returned in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of bus bearing registration No.PB-04-M-9785 driven by Jasvir Singh and which resulted to injuries on the person of Jaspal Singh and who succumbed to the same on the following day of the accident. As regards compensation, the same was computed to be Rs.7,37,000/-. However, a view was taken that agents of the owner of the offending vehicle had allowed Jaspal Singh (since deceased) to sit on the roof of the bus and as such, there had been a breach of terms and conditions of the insurance policy and accordingly, insurance company was absolved from its liability to pay the compensation. It was directed that the amount of compensation at the first instance would be paid to the claimants by the Insurance Company but recovery rights were granted to the insurance company to recover the compensation amount from driver and owner i.e. appellants herein.

7. I have heard counsel for the appellants as also counsel representing the contesting respondent No.1/New India Insurance Company.

8. Mr. Ashwani Talwar, learned counsel representing the Insurance Company does not dispute that the issue with regard to liability of Insurance Company to indemnify the insured to pay compensation even in respect of the claims arising out of death or injury suffered by the

passengers travelling on the roof of the offending vehicle has been dealt with by a Division Bench of this Court in **Oriental Insurance Company Limited Versus Smt. Meena Devi and others, 2012 (2) RCR (Civil) 334** and wherein it was held as follows:

*“17. In view of the said judgment and the consistent view of various High Courts including the Hon'ble Supreme Court, we have no hesitation to hold that travelling on the roof top of the bus, does not absolve the Insurance Company of its liability. The judgment of this court in **Samundri Roadways Co. Pvt.** case (supra) is contrary to number of judgments mentioned above, therefore, it does not lay down good law. We are of the opinion that 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.*

18. In the present case, one passenger lost his life. Therefore, the liability of the Insurance Company in respect of such passenger is unlimited. Thus, the Insurance Company is liable to satisfy the entire award, as it falls within the maximum sum of compensation, which the Insurance Company has undertaken to pay in respect of passengers.”

9. By following the dictum laid down in **Smt. Meena Devi's case (supra)**, the instant appeal is accepted and the impugned award dated 14.05.2014 passed by the Motor Accident Claims Tribunal, Faridkot is modified to the extent of grant of recovery rights to respondent No.1/ Insurance Company against the appellants herein. Since, it is the

admitted position as regards the offending bus being insured and the driver holding a valid and effective driving license as on the date of accident, it would be respondent No.1/Insurance Company that would be liable for the compensation amount awarded in favour of the claimant i.e. respondents No.2 to 5 herein.

Appeal is allowed in the aforesaid terms.

13.08.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |