

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No.7583 of 2016(O&M)

Date of Decision: 30.04.2018

Oriental Insurance Company Limited

... Appellant

Versus

Sona Devi & ors.

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Harsh Aggarwal, Advocate,  
for the appellant.

Mr. Vinod K. Kanwal, Advocate, for  
Mr. Ashit Malik, Advocate,  
for respondents No.1 and 2.

Mr. Sandeep Lather, Advocate,  
for respondent No.3.

Mr. Ajit Bhardwaj, AAG, Haryana.

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**RAMENDRA JAIN, J.(Oral)**

By way of this appeal, Insurance Company has laid challenge to the impugned award dated 22.09.2016 of the Motor Accident Claims Tribunal, Kurukshetra, (in short 'the Tribunal'), whereby respondents No.1 and 2-claimant have been awarded compensation of ₹15,17,112/- along with interest @ 9% per annum from the date of institution of claim petition till realization.

Put pithily, on 13.01.2016, Amrik Singh, a young boy aged about 21 yeas, while travelling in Haryana Roadways bus driven by respondent No.3 and owned by respondents No.4 to 6, received multiple injuries on account of rash and negligent driving of respondents No.3 and succumbed to the same. In a claim petition filed by his parents respondents No.1 & 2,

learned Tribunal awarded the compensation of ₹15,17,112/- to them along with interest @ 9% per annum vide impugned award.

Learned counsel for the appellant-Insurance Company *inter alia* contends that as per own case of respondents No.1 and 2-claimant, their deceased son Amrik Singh was standing near the front door of the offending bus, which proves that deceased himself was negligent for his death. Considering this aspect of the case, the learned Tribunal ought to have reduced 50% of the awarded compensation towards contributory negligence of the deceased. Learned counsel further contends that the parents of the deceased were Below Poverty Line (BPL) Card holders. Therefore, income of the deceased could not have been taken more than ₹41,000/- per annum.

On the other hand, learned counsel for the claimants vehemently opposing the above submissions, submits that sole rash and negligence of the driver of offending bus is well proved on record. Therefore, no question arises of any contributory negligence on the part of the deceased.

Having given anxious consideration to the submissions made by both the sides, I find no merit in the contention of learned counsel for the appellant for the reason that there is specific unrebutted evidence on record that respondent No.3 while driving the bus in rash and negligent manner turned the same towards side of Shahabad. When the bus was in the process of crossing the under bridge of Saha turn, on account of sudden jerk, deceased Amrik Singh along with 2-3 persons standing near the front door fell down on the road.

From the above unrebutted evidence, it cannot be gathered that deceased and 2-3 persons, who also fell down with him, had also contributed to the accident.

There is no evidence on the record showing any negligence of the deceased for his falling down from the running bus being driven in rash and negligent manner. Consequently, no question of contributory negligence of the deceased arises.

Both the parties are *ad idem* to the effect that compensation in this appeal has to be calculated according to principles laid down in National Insurance Company Ltd. Vs. Pranay Sethi & ors., 2017(4) RCR (Civil) 1009.

According to *Pranay Sethi's case (supra)*, the respondents-claimant were only entitled to ₹30,000/- towards funeral expenses and loss of estate, but the learned Tribunal has erroneously granted ₹2,25,000/- under the said heads. The same is reduced to ₹30,000/-. Learned Tribunal has also erred in adding 50% of the alleged income of the deceased towards his future prospects, which has to be taken 40%. Both the sides have not disputed these facts.

There is no evidence that the deceased was also a BPL Card holder. The Insurance Company has not led any evidence before the learned Tribunal that BPL Card in the name of the claimants was also consisting the name of the deceased. In the absence of any such evidence, learned Tribunal has rightly ignored BPL Card of the claimants while taking income of the deceased at ₹7976/-. Even otherwise, there is no law that a BPL Card holder cannot earn the minimum wages. BPL Card holder means that its holder is living a life below poverty line and not anything beyond it.

In fatal accident cases, settled proposition of law has to be taken into consideration. Therefore, for assessing the income, minimum wages prescribed by the Government is the best formula which is well accepted throughout. To the knowledge of this Court, no contrary method has come as

yet. Reference can be had to the judgment of this Court in Reliance General Insurance Company Ltd. Vs. Sohna Ram & ors., FAO No.4269 of 2015, decided on 11.12.2015 .

In view of discussion above, respondents No.1 and 2-claimant are held entitled to total compensation of ₹12,35,971/- instead of ₹15,17,112/-. Consequently, ₹15,17,112/- minus ₹12,35,971/-=₹2,81,141/- in excess has wrongly been awarded by the learned Tribunal to respondents No.1 and 2-claimant. The impugned award is modified accordingly and the compensation amount is reduced to ₹12,35,971/-.

During the course of arguments, it has been pointed out that the appellant-Insurance Company has already deposited the entire awarded amount before the learned Tribunal. Learned Tribunal is directed to proceed against respondents No.1 and 2-claimant in accordance with law to recover the excess amount so to be refunded to the Insurance Company along with interest in proportionate earned by them on their fixed deposit receipts.

With the above observation and direction, the appeal stands disposed of.

**30.04.2018**  
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**(RAMENDRA JAIN)**  
**JUDGE**

*Whether speaking/reasoned*  
*Whether reportable*

*Yes/No*  
*Yes/No*