

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

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FAO 5474 of 2018 (O&M)
Date of decision: 25.09.2018

Oriental Insurance Company Limited *Appellant*

Versus

Renu Sharma and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sat Pal Dhamija, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 18479 CII of 2018

Prayer in this application is for condonation of delay of 15 days
in re-filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit and arguments advanced, the application is allowed and delay of
15 days in re-filing the appeal stands condoned.

Main case

The present appeal directs challenge against award dated
19.03.2018 passed by the Motor Accidents Claims Tribunal, Chandigarh
(hereinafter to be referred as 'the Tribunal') whereby compensation has been
assessed on account of death of Shri Ashok Kumar Sharma in a motor
vehicular accident that took place on 23.05.2016.

Counsel for the appellant-insurance company would inform that

the appeal has been preferred to assail the award primarily on two grounds namely the vehicle was being plied in violation of route permit issued by the Union Territory, Chandigarh as well as quantum of compensation assessed by the Tribunal. To bring home his contention, it is argued that the offending vehicle was scheduled to operate en route Chandigarh to Sirsa and the permit has been signed by the Transport Authority at Patiala, therefore, the Bus was to travel from Chandigarh to Sirsa via Patiala. It is argued that as the accident took place near Kaithal and Kaithal does not fall in the way from Chandigarh to Sirsa via Patiala, owner of the bus is guilty of violating terms and conditions of permit constituting a defence in favour of the insurance company under Section 149 (2) of the Motor Vehicles Act, 1988 (in short, 'the Act').

With regard to compensation assessed by the Tribunal, counsel would urge that the deceased was an employee of State Bank of India, Uklana Mandi, District Hissar and he was due for retirement within 4-5 years from the date of occurrence, therefore, the Tribunal has wrongly applied multiplier of '11' on the basis of age of the deceased within the age bracket of 51-55 years.

Counsel for the appellant has also made a vain attempt to argue that driver and conductor of the offending bus appeared in the witness box and deposed that accident had taken place due to rash and negligent driving of Canter bearing No. HR-56F-0089 which was coming from the side of Narwana. It is argued that even if the present is a case of composite negligence of both the vehicles involved in the occurrence, insurance company cannot be saddled with liability to pay entire compensation and the same is liable to be apportioned to the extent of negligence attributable

to each of the vehicles involved in the accident.

I have heard counsel for the appellant and perused the paper book particularly the award.

Indisputably, the bus in question was allowed route from Chandigarh to Sirsa by the Transport Authority at Chandigarh and the said permit has also been signed by the Transport Authority at Patiala. The mere fact that the permit was also signed by the concerned authority at Patiala cannot be construed to mean that the bus was bound to go via Patiala and no other route through State of Haryana. On the contrary, permission by the authority at Patiala would authorize the bus to be plied through Patiala as well. That being so, contention of the insurance company, in this regard, is mis-conceived and accordingly rejected.

This brings the Court to quantum of compensation assessed by the Tribunal. The contention of the appellant to challenge correctness of multiplier is not tenable when examined in the light of judgment of Hon'ble the Supreme Court *Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77*.

So far as plea of the insurance company with regard to composite negligence of Canter assuming that the present is a case of composite negligence of two vehicles, the claimants have been given liberty in law to claim compensation from either of the joint tort-feasors, therefore, the insurance company cannot escape liability to pay compensation. This apart, as the claimants have not impleaded the driver, owner or insurer of the Canter on the array of respondents, there was no occasion with the Tribunal to decide if the present is a case of composite negligence of two vehicles and the extent of negligence attributable to each

one of them.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No orders as to costs.

(Rekha Mittal)
Judge

25.09.2018
mohan bimbura

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