

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

F.A.O. No.2462 of 2019(O&M)

Date of Decision: 10.04.2019

National Insurance Company Limited through its Assistant Manager

.....Appellant.

Versus

Bhagwan Dei @ Bhagwan Devi and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Paul S. Saini, Advocate
with Mr. Vipul, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by the Insurance Company challenging award dated 02.11.2018, passed by the learned Motor Accident Claims Tribunal, Mewat (for short 'Tribunal'), on the ground that the deceased-Shokeen son of Chattar Singh was travelling on the rooftop of the bus, therefore, if not entirely responsible for the accident, there is at-least an element of contributory negligence on his part. There is no challenge to the quantum of compensation as awarded.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), Shokeen along with his father Chattar Singh and one Mukesh Kumar on 12.12.2017 was going to Ferozepur-Jhirka from village Basai-Meo on a motorcycle. At about 8.00.a.m., when they reached bus stand of village Basai-Meo, a bus bearing registration no. RJ-05-PA-1173 came from the side of village Biwan and Chattar Singh asked his son Shokeen to board the same as there were three occupants on the

motorcycle. As the bus was overloaded, respondent no.2-Shiv Charan, driver of the offending bus, forced Shokeen to sit on the roof of the bus. Chattar Singh and Mukesh started following the bus on their motorcycle. Respondent no.2 was driving the bus in a rash and negligent manner. When the bus reached the valley of village Basai, respondent no.2 turned the bus at a high speed and in a rash and negligent manner. As a result thereof, Shokeen fell on the road, sustained serious multiple injuries and died at the spot. FIR No. 521 dated 12.12.2017, under Sections 279, 304-A IPC, Police Station Ferozepur-Jhirka, was registered, in this respect.

Learned tribunal awarded a sum of ₹6,78,000/- along with interest @7% per annum from the date of filing of the claim petition till realisation of the amount to the claimants while holding that the accident in question took place due to the rash and negligent driving of respondent no.2, driver of the offending bus.

Learned counsel for the appellant vehemently argues that Shokeen (deceased) was admittedly travelling on the rooftop of the bus. There is no evidence on record to show that any ticket was issued to him or that the driver or conductor of the bus had permitted him to travel on the rooftop of the bus. Therefore, Shokeen was at best, an unauthorized traveller on the rooftop of the bus. Moreover, neither the driver, nor owner of the bus came-forward to depose that any permission had been given to Shokeen to travel on the rooftop of the bus. It is further submitted that in view of Section 123 of the Act, finding returned by the learned tribunal regarding the accident having taken place due to the rash and negligent driving/act of the respondent-driver, is incorrect, unjustified and liable to be set aside.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

A perusal of the file reveals that on the fateful day, the deceased-Shokeen was asked by his father i.e. Chattar Singh-PW-1 to board a bus to Ferozepur-Jhirka as he along with his son and another person namely Mukesh were going to Ferozepur-Jhirka on a motorcycle. Since three passengers should not be travelling on a motorcycle, he asked his son to board a bus for reaching Ferozepur-Jhirka. PW-1-Chattar Singh, categorically stated that the driver and the conductor of the offending bus forced his son to sit on the rooftop of the bus as the bus was overcrowded. The offending bus is a private bus and PW-1-Chattar Singh, who was also travelling to Ferozepur-Jhirka specifically stated that when the bus reached in the valley of village Basai, the driver of the offending bus took a sharp turn in a negligent manner at a high speed, due to which his son fell down and died at the spot. Chattar Singh and Mukesh were travelling behind the bus on their motorcycle.

Learned counsel for the appellant does not deny that the driver of the offending bus has not stepped in the witness box to rebut the contentions of PW-1. In-fact, learned counsel seeks to draw an adverse inference *qua* the claimants on this account, whereas by not stepping in the witness box, driver of the offending bus has cemented the case of the claimants. Adverse inference has necessarily to be drawn against the respondents. There is not an iota of evidence on record pointed out by learned counsel to prove any collusion between the claimants and the driver/owner of the bus. Thus, argument raised by learned counsel, that as

the driver of the bus did not come-forward, case of the Insurance Company is fortified to the effect that no permission was given to Shokeen to travel on the rooftop and he was an unauthorized traveler, is clearly fallacious and misplaced. Equally untenable is the argument that no ticket was produced to show that the deceased was an authorized traveller on the offending bus. The same are accordingly rejected.

In the given facts and circumstances of the case, where the accident was witnessed by PW-1-Chattar Singh and FIR Ex.P-1 was registered promptly on the same day of the accident as well as presentation of the final report under Section 173 Cr.P.C., indicates genuineness of the claim set up by the claimants.

A Division Bench of this Court in **Oriental Insurance Co. Ltd. Vs. Smt. Meena Devi and others 2012(2) RCR (Civil) 334**, has observed that merely because a passenger is travelling on the roof top of a vehicle, does not absolve the insurance company from its liability. Moreover, in this case, it is one passenger who has lost his life, therefore, liability of the insurance company in respect of such passenger is unlimited. It is specifically observed by the Division Bench in Oriental Insurance Company's case (supra) that:-

'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.

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.'

It is not in dispute that in the instant case, the bus in question was duly insured with the appellant-Insurance Company.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 02.11.2018 passed by the learned tribunal, Mewat, which calls for interference by this Court, at the instance of the appellants.

There is a delay of 26 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing this appeal has been rendered academic. Application is accordingly disposed of.

Appeal is accordingly dismissed with no order as to costs.

10.04.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.