IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 974 of 1995
Date of Decision: March 06, 2019

The New India Assurance Co. Ltd. ...... Appellants(s)

Versus

Kamla Devi and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

None for the respondents.

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LISA GILL, J. (oral)

This appeal has been filed by the insurance company challenging its liability to pay the compensation awarded to the claimants-respondents vide award dated 30.11.1994, passed by learned Motor Accidents Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal).

Brief facts necessary for the adjudication of the case are that claimants-respondents filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of Makhan Singh in a motor vehicle accident, which took place on 21.02.1993. It was pleaded that Makhan Singh along with his son Saranjit Singh boarded a bus bearing registration No.PB-06-1134 for going to Dhariwal. The conductor asked them to sit on the roof top of the bus as there was great rush in the bus. When the bus reached near ITI, Gurdaspur, Makhan Singh was hit by a branch of a tree, due to which he sustained injuries and he fell on the roof itself. Driver and conductor of the offending bus did not make any effort to take the injured to the Civil Hospital, Gurdaspur but dropped him on the way itself to avoid their liability. Makhan Singh succumbed to his injuries at Civil Hospital, Gurdaspur.

Learned Tribunal on considering the evidence on record, facts and circumstances of the case observed that death of Makhan Singh had taken place due to the injuries suffered by him while sitting on the roof top of the bus due to the negligence of the driver and conductor of the bus in question. It was further held that there was no question of any contributory negligence on the part of the deceased in this matter. Learned Tribunal awarded a compensation of Rs.3,24,000/- to the claimants. Aggrieved therefrom, present appeal has been filed by the insurance company.

Learned counsel for the appellant submits that the deceased Makhan Singh by the very act of sitting on the roof top was solely responsible for the accident in question. In the alternate, some percentage of contributory negligence should necessarily be attributed to the deceased. No serious argument has been raised qua the quantum of compensation.

I have heard learned counsel for the appellant and have gone through the record.

Learned counsel for the appellant is unable to deny that 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 the bus in question was duly insured with the appellant insurance company. Learned counsel for the appellant is unable to point out any illegality and infirmity in award dated 30.11.1994 passed by learned Motor Accident Claims Tribunal, Gurdaspur, which calls for interference by this Court.

No other argument has been raised.

Accordingly, this appeal is dismissed with no order as to cost.

March 06, 2019. **(LISA GILL)**
Sunil **JUDGE**

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