

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

FAO-2479-1997 (O&M)

Date of decision : 17.7.2019

Smt. Minder Kaur and another

..... Petitioners

Versus

Ishwar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vivek Suri, Advocate for appellant.

Mr. Tanuj Sharma, AAG, Haryana.

KULDIP SINGH, J.

Claimants-appellants have preferred the present appeal against the award dated 1.9.1997, passed by Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') vide which compensation to the tune of Rs. 3,15,000/- was allowed on account of death of Jitender Mohan Singh in a motor vehicle accident. Feeling dissatisfied with the said compensation, claimants-appellants have preferred the present appeal.

Brief facts of the case are that Jitender Mohan Singh aged about 40 years was employed in M/s Sarabhai Chemicals Delhi, on monthly salary of Rs. 4,000/-. On 9.5.1995 at about 6.a.m he boarded Haryana Roadways Bus bearing registration No. HR-38-3481 from bus stand Gurgaon for going to Ambala to attend the conference organized by his employer company. Jitender Mohan Singh was sitting in the bus on the seat just in front of the only gate of the bus. Driver of the bus-Ishwar Singh/respondent No. 1 started the bus in rash and negligent manner at a high speed and while passing over the speed breaker installed near the gate

of the bus stand, the bus had a high jump. As a result of which Jitender Mohan Singh fell out of the bus and was run over under the rear wheels of the bus. A criminal case was registered against the bus driver-Ishwar Singh-respondent No. 1.

In the reply, respondent No. 1-driver of the bus took the plea that the FIR was lodged in collusion with the police. He also denied that he was driving the bus in rash and negligent manner and that the bus while passing the speed breaker was not slow down and bus jumped too high and the deceased fell down on the gate of the bus. Respondents No. 2 and 3 also denied the case of the claimants-appellants and denied that the bus was being driven in rash and negligent manner.

From the pleadings, following issues were framed: -

1. Whether Jitender Mohan Singh died as a result of rash and negligent driving of Bus No. HR-38-3481 by its driver Ishwar Singh? OPP.
2. Whether the petitioners are the legal heirs/representatives of the deceased? OPP.
3. To what amount of compensation, if any, the petitioners are entitled to and against whom? OPP.
4. Relief.

While deciding issue No. 1, the Tribunal held that there was a contributory negligence on the part of the deceased-Jitinder Mohan Singh while driver of the bus was also rash and negligent in driving the bus. Accordingly, while calculating the compensation @ Rs. 6,30,000/-, a cut of Rs. 50% was applied and the compensation was reduced to Rs. 3,15,000/-.

Heard, learned counsel for the parties and have also gone through the case file carefully.

The first and foremost question arising for consideration is as to whether the accident took place due to sole negligence of the bus driver or Jitender Mohan Singh was also responsible for the accident. For this purpose, evidence is required to be reassessed. Harjinder Singh (PW-6) who had lodged the FIR (Ex. P-2) with the police had stated that he was also travelling in the said bus at the time of accident. When the bus crossed the gate of the bus stand, it jumped over the speed breaker as a result of which Jitender Mohan Singh who was standing in the gate of the bus had fell down and was run over under the rear tyres of the bus. A suggestion was put to him that Jitender Mohan Singh tried to board the bus and in this process he fell down and was crushed under the rear wheel of the bus because of his own negligence. Ishwar Singh-driver of the bus in question appeared as RW-1 and stated that there was only one door of the bus. Passengers had fallen out from the bus. At that time, bus had already passed over the speed breaker. Passenger died of his own negligence. He does not state that passenger tried to board the bus and in this process, he fell down. Therefore, it is clear that the passenger-Jitender Mohan Singh was in the bus. It is also not denied by the driver of the bus in question that there was a speed breaker just outside the bus stand. It was the duty of the bus driver to see that he put the bus in motion only when all the passengers have boarded the bus and the door of the bus is closed. It is generally observed that due to rush in the bus, the people stand in the foot rest of the bus which are inside the bus. The driver was supposed to be careful that the bus is fully loaded and there is a speed breaker and if the bus crosses the speed breaker at a bit high speed a jerk is likely which could result in fall any of the passengers.

The bus driver himself has stated that the passenger fell down after the bus had crossed the speed breaker. Naturally, when the bus passed the speed breaker, there was a jerk and thereafter the passenger fell out of the bus. The fact remains that at the time before falling from the bus, Jitender Mohan Singh was inside the bus and fell down immediately after the bus crossed the speed breaker. Therefore, there is an apparent rash and negligent driving on the part of the bus driver. Therefore, it cannot be said that Jitender Mohan Singh was himself negligent and contributed to the accident. Hence, the findings on issue No. 1 are reversed.

In a similar case where the passenger was standing near the gate of the bus and died as a result of fall from the bus, a Single Bench of Delhi High Court in the authority contained in ***Oriental Insurance Company Ltd. vs. Urmila Devi and ors, 2013 ACJ 641***, observed as under: -

“6. It was the duty of the driver and conductor of the bus to take care that the passengers do not stand near the rear gate of the bus. If a driver permits a passenger to stand near the gate of the bus, he cannot be absolved of negligence as it is the bounden duty of the driver to carry the passengers safely. Thus, it cannot be said that the deceased himself contributed to the accident by standing near the rear gate in an overcrowded bus.”

It was held that there was no contributory negligence on the part of the passenger. Similarly in an authority of Division Bench of Kerala High Court in ***Bhaskaran vs. Ravindran and others, 1900 ACJ 1032***, observed as under: -

"16. The correct principle appears to be what we have already indicated. It is the duty of the conductor to see that the bus is set in

motion only after all alighting passengers have alighted and passengers intending to travel in the bus board the bus. Boarding a bus does not mean merely entering the footboard. Boarding the bus means getting inside the bus and either sitting in a seat or standing in the space reserved for standing passengers. A conductor has a statutory duty to see that there are no footboard passengers. If a passenger is on the footboard and there is no space at all for him to sit or stand inside the bus, he must be asked to get down and the bus can be set in motion only after he alights. When there is sitting or standing space inside the bus, it is the duty of the conductor to see that a passenger who is on the footboard gets inside the bus and seats himself or stands in the space reserved for standing passengers before giving signal for the bus to start. This corresponds with the driver's duty to ensure that bus is moved only after ensuring safe travel conditions. In the discharge of his duty he is largely guided by the instructions of the conductor. If a bus with no vacant seat and no standing space is started when a passenger is on the footboard and he is not asked to alight from the bus or not cautioned against travel on footboard and accident takes place and the footboard passenger sustains injury, wholly or partly on account of his position on the footboard, he cannot be held to be guilty of contributory negligence. It may be that if he refuses to alight in spite of the direction by the conductor or if he is cautioned about the risk he is undertaking by travel on footboard, it is not possible to absolve him of the responsibility in the accident. We, therefore, hold that the claimant was not guilty of contributory negligence."

The said authority was also relied upon by the Single Bench of Delhi High Court in *Urmila Devi's case (supra)* to conclude that in such cases, there is no contributory negligence on the part of the passengers.

Now coming to quantum of compensation, it comes out that as per the statement of Dr. P.K.Kapil, Divisional Marketing Manager, Sarabhai

Chemicals, New Delhi, the salary of the deceased was Rs. 4907.25 per month as on 1.5.1995. The said salary is after deduction of income tax.

Learned counsel for claimants-appellants have also placed reliance on filing the income tax return also, showing the salary deductions which shows that after the deduction of income tax, salary of the petitioner per annum was Rs. 58472/- from which income tax of Rs. 1594/- was deducted. Hence, the total income of the deceased comes to Rs. 56878/-. After deducting 50% of the amount being income for six months, it comes to Rs. 28439/-. The mother of the deceased had died during the pendency of the claim petition as stated by claimant No. 1 himself in the evidence. As such there were only two dependents. 1/3rd is deducted on account of personal expenses which comes to Rs. 9479/-. Considering the age of 40 years, multiplier of 15 is applied. Hence, the amount comes to 9479 x 15 x 12 which comes to Rs. 17,06,220/-. Rs. 70,000/- are allowed on account of conventional heads. Rs. 40,000/- are allowed for loss of love and affection to the minor claimant. Hence. The total amount of compensation comes to Rs. 18,16,220/-. The enhanced compensation was to be paid with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

Appeal stands allowed accordingly.

(KULDIP SINGH)
JUDGE

17.7.2019
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No