

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

410

FAO No.3147 of 2002 (O&amp;M)

Date of Decision : 28.02.2019

LALCHI KHATOON AND OTHERS

...APPELLANTS

V/S

HARMAIL SINGH AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Yogesh Goel, Advocate for the appellants.

Mr. Sandeep Singh Deol, DAG, Punjab.

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**B.S. WALIA, J. (ORAL)**

[1] Appeal has been filed by the mother, father, widow and then two minor children of Wazir Mian, who received injuries in a motor vehicular accident on 27.07.2000 and died as a result thereof on 03.08.2000.

[2] The claim petition was dismissed on the ground that claimants had failed to prove that the accident had taken place due to the rash and negligent driving of the bus by the driver or that the conductor was at fault.

[3] Learned counsel for the appellants contends that as per the statement of PW-2, Wakil Mian i.e. brother of deceased, when the deceased was about to alight from the bus, respondent No.1 without caring for the deceased safely alighting from the bus, started the bus, as a result of which the deceased Wazir Mian fell down and received head injuries as a result of which he died on 03.08.2000.

[4] Learned counsel contends that in the circumstances, the negligence

dismissal of the claim petition except for award of ₹ 50,000/- on account of no fault liability is legally unsustainable.

[5] *Per contra*, learned counsel for the respondents contended that the learned Tribunal took into account FIR (Ex. P-1) registered by PW-2 brother of Wazir Mian i.e. deceased in which it was specifically mentioned that he had asked the conductor to stop the bus at Aggar Nagar Bus Stop and the conductor had blown the whistle and when the bus was slowing down so as to stop, Wazir Mian tried to alight from the bus and in the process fell down and suffered injuries and that in the circumstances, the learned Tribunal held that a passenger jumping out of a moving bus was definitely guilty of negligence and a bus driver could not possibly anticipate that a passenger would do so and neither could a conductor be blamed for such act of a passenger and that in the circumstances, there was no need of care and caution on the part of the driver and conductor of the bus, which normally a man of ordinary prudence observes.

[6] I have considered the submissions of learned counsel for the parties.

[7] As per the statement made by PW-2 as is contained in the report under Section 173 Cr.P.C., the conductor was sitting on the seat adjacent to the driver and on his asking the conductor to stop the bus, the conductor gave a whistle for the said purpose and his brother who was sitting on the seat, adjacent to the rear door was in the process of alighting / his brother tried to alight from the bus when the bus had not yet stopped and in the process fell down and sustained injuries, eventually succumbing to the same after a few days.

[8] Aforementioned position reveals beyond an *iota* of doubt that the conductor of the bus was not in the rear of the bus from where the deceased was to alight on the stoppage of the bus and was instead sitting in the front along with the driver. Statement of the driver RW-1 does not reflect the stand of the driver that the conductor or he himself having stopped the deceased from opening the door or alighting from the bus till such time that the bus had not stopped. In fact, it was incumbent upon the conductor of the bus to have been near the rear door of the bus and to have ensured that the same was not opened till such time that the bus had stopped and passengers wanting to alight from the same got down only after the bus had stopped. Neither is there any such statement of the driver of the bus nor has the conductor of the bus been examined. No doubt, it was the duty of the deceased to have waited for the bus to stop and then alight from the bus but the evidence on record shows that he alighted from the bus while it was still in motion. In the circumstances, I would hold that the conductor and the driver of the bus as well as the deceased were equally negligent in as much as the conductor did not ensure that the door was not open prior to the stoppage of bus / passenger did not open the door or alight from the bus till such time that the bus had stopped. Besides, the conductor of the bus was sitting in the front of the bus adjacent to the driver instead of being at the rear end of the bus. Presence of the conductor in the rear end of the bus was essential to ensure the safety of the passengers alighting from the bus. The said duty was not discharged by the conductor of the bus nor was the conductor of the bus examined. Therefore, an adverse inference is drawn on account of non examination of the conductor of the bus. Resultantly, the claimants are entitled to just compensation. The deceased was an unskilled labourer, who left

Wazir Mian, died on 03.08.2000. As per the notification issued under the Minimum Wages Act, 1948 for the relevant period, minimum wages payable to an unskilled labourer was ₹ 1795.50 per month. Photocopy of the notification duly signed by learned counsel for the appellants is taken on record and copy handed over to learned counsel for the respondents, who does not dispute the rates of minimum wages payable to an unskilled worker. Accordingly, the income of the deceased is taken as ₹1795.50 per month (rounded off to ₹1800/- p.m.). Since the deceased was less than 40 years of age and was self employed, therefore, as per paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in 'National Insurance Company Limited versus Pranay Sethi and others', 2017(4) RCR (Civil) 1009, 40% of the established income of the deceased minus the tax component is to be taken into account towards future prospects, while computing the compensation payable. Secondly as per paragraph No.61(viii) of the decision of Hon'ble the Supreme Court in 'Pranay Sethi's case (supra)', a sum of ₹40,000/- is payable on account of spousal consortium while ₹15,000/- is payable on account of funeral expenses and like amount on account of loss of estate. Since the deceased left behind four dependants, therefore, deduction would be made @ 1/4<sup>th</sup> of the income of the deceased towards his personal expenses. Since the deceased was admittedly 25 years of age therefore as per paragraph No.21 of the decision of Hon'ble the Supreme Court in 'Sarla Verma and others versus Delhi Transport Corporation and another', 2009(6) SCC 121, multiplier of '18' would be applicable.

[9] Since the accident took place on 27.07.2000 and the deceased remained admitted in hospital in Arora Neuro Centre, Ludhiana and died after

a few days on 03.08.2000, some expenses must have been incurred on the

treatment of the deceased. Although, no evidence is there on the record yet making a rough estimate, a sum of ₹10,000/- is awarded on account of medical expenses. Likewise, in the light of decision of Hon'ble the Supreme Court in 'N. Sivammal versus Managing Director, Pandian Roadways Corporation', 1985(1) SCC 18, the appellants are held entitled to award of Rs. 10,000/- on account of pain and suffering which the deceased as well as the claimants suffered while the deceased hovered between life and death from the date of accident till date of death.

[10] Consequently, the compensation payable works out as under :-

- i) Income assessed Rs. 1800.
- ii) Future prospects @ 40% of the established income of the deceased = Rs. 720/-.
- iii) Total income- Rs. 1800 + Rs. 720 = Rs. 2520/-
- iv) Deduction @  $\frac{1}{4}$ <sup>th</sup> of the total income = Rs. 630 = Rs. 1890/-.
- v) Multiplier=18.
- vi) Rs. 1890 x 12 x 18 = Rs. 4,08,240/-.
- vii) Loss of spousal consortium ₹40,000/-.
- viii) Funeral expenses ₹15,000/-.
- ix) Loss of estate ₹15,000/-.
- x) Medical expenses ₹10,000/-.
- xi) Pain and suffering ₹10,000/-.
- xii) Total ₹4,98,240/-.

[11] Since the respondents and deceased were equally negligent, therefore, the compensation payable is liable to be apportioned in the ratio of 50 : 50 on account of contributory negligence of the deceased as well as driver

₹4,98,240/-, the appellants are held entitled to award of compensation of ₹2,49,120/- less ₹50,000 already paid as compensation on account of no fault liability = ₹1,99,120/-along with interest @ 6% per annum with effect from the date of claim petition, till date of payment.

[12] Needless to mention, tax liability if any, *qua* future prospects shall be deduced, while making payment of compensation in accordance with the decision in '**Pranay Sethi's** case (*supra*). Accordingly, appeal is **allowed**, award dated 14.03.2002 passed by the learned Tribunal, Ludhiana is **modified** to the extent as noted above.

**(B.S. WALIA)**  
**JUDGE**

**February 28, 2019**  
'rajneesh'

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