

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

XOBJC No.11—2019 in/and
FAO No. 1607 of 2001 (O&M)
Date of Decision: 4.2.2019

Transport Commisioner (Rajasthan State Road Transport Corporation,
Ganga Nagar (Rajasthan)

...Appellant

Versus

Smt. Shanti Devi and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Kumar Gehlawat, Advocate
for the appellant.

Mr. Munjaid Khan, Advocate
for cross-objectors/respondents No.1 to 4.

JAISHREE THAKUR, J.

1. This order shall dispose of the main appeal (FAO No. 1607 of 2001) as well as cross-objections (XOBJC No. 11—2019) filed on behalf of respondents No.1 to 4.

FAO No. 1607 of 2001

2. This is an appeal filed by the Chief General Manager Rajasthan Roadways against award dated 08.02.1999 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as '**the Tribunal**') for death of Kishan Chand (hereinafter referred to as '**the deceased**') in a motor vehicle accident that took place on 20.01.1997.

3. In brief, the facts of the case are that, on 20.01.1997 a three wheeler No.HR46-2850 being driven by Satvir Singh @ Pappu started from

village Balliana at 6.40 a.m. with passengers Balbir Singh, Shiv Parkash, Ranbir, Sunil, Raghu Nath, Bhisham and Sultan and at about 6.45 a.m. Raj Singh, Din Dyal, Ram Bhaj, Rajinder, Joginder and Dalbir also boarded in the said three wheeler from village Kheri Sadh. The tempo was being driven by Satvir Singh, driver on the left side of the road and when it reached 2-3 killas ahead of Hanuman Mandir towards village Kharawar, a bus of Rajasthan Roadways (RSRTC) bearing No.RJ13-P-0734 being driven rashly and negligently by Ram Sarup, respondent No. 5 herein, came from Delhi side i.e. from opposite direction. The bus dashed into the tempo at about 7.00 a.m. This head-in-collision occurred due to rash and negligent driving of the bus by its driver, resulting into injuries to occupants of the tempo. Satvir, Sultan, Raj Singh, Din Dayal and Kishan Chand died as a result of the accident. Other occupants of the tempo also suffered injuries. The respondents No.1 to 4 herein filed a separate claim petition No. 42 of 1997, which was allowed by the Tribunal.

4. The learned Tribunal, after appreciating the evidence on record awarded compensation of ₹ 4,97,000/- to the claimants.

5. Learned counsel for the appellant has assailed the award on the ground that deceased Kishan Chand and 12 other passengers were travelling in the tempo No. HR46-2850 when the appellant's Bus No.RJ13-P-0734 came from Delhi side i.e. opposite direction and a head-on-collision took place on the main road, as such, it clear that the accident took place due to rash and negligent driving of both the vehicles and compensation was to be apportioned as 50:50. It is also contended that finding of the Tribunal on issue No.1 is not sustainable, as the Tribunal did not consider the testimony

of RW1 Ram Singh, driver of the appellant's bus.

6. On the other hand, learned counsel for respondents No.1 to 4 argues that findings of the Tribunal on issue No.1 are well reasoned and the same do not call for any interference.

7. I have heard learned counsel for both the sides, apart from perusing the record.

8. The Tribunal, while deciding issue No.1 against the appellant herein, relied upon the statement of PW2 Balbir Singh, who was an eye-witness and also got lodged the FIR Ex.P1. Said Balbir Singh was not amongst the claimants, as such, he was an independent witness. He supported the version of the claimants that the bus in question was being driven rashly and negligently, whereas the tempo was being driven at moderate speed and was partly on *katcha* berm on left side. He stated that the bus dashed into the tempo, resulting into death of the deceased persons and injuries to the other passengers. Moreover, injured Shiv Parkash PW6, Joginder PW13 and Rajinder Singh PW14 have also made the similar statements that the bus was being driven rashly and negligently and dashed into the bus. The accident occurred due to fault of bus driver Ram Sarup, respondent No.1. The Tribunal also took note of the fact that RW1 Ram Sarup (driver of the offending bus) admitted that criminal case regarding the accident in question was pending against him. The Tribunal came to hold that solitary statement of RW1 Ram Sarup is not sufficient to rebut the cogent evidence available on record against him. The Tribunal further observed that RW1 Ram Sarup even did not state that the tempo was being driven rashly and negligently. The Tribunal has also considered the

arguments raised by learned counsel for the appellant regarding foggy morning and overloading of the tempo, however, did not find any force behind the same.

9. In view of the above, the findings recorded by the Tribunal on issue No.1, does not call for any interference by this court.

XOBJC No. 11—2109

10. In this case, cross-objections have been filed by the claimants to enhance the compensation.

11. Learned counsel for cross-objectors/respondents submits that admittedly the deceased, who was 49 years of age, was employed in the Central Social Welfare Board, New Delhi and was drawing salary of ₹5700/- per month. It is submitted that increase on account of future prospects has not been afforded in view of the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. It is further submitted that the multiplier of 13 was required to be applied instead seven applied by the Tribunal. It is also contended that the Tribunal has not awarded any interest on the amount of compensation.

12. There is no dispute regarding the age of the deceased—Kishan Chand i.e. 49 years at the time of accident. There is further no dispute regarding income of the deceased i.e. ₹5733/- per month as assessed by the learned Tribunal. However, increase in income on account of future prospects at the rate of 40% is required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited (supra)**. Therefore, compensation payable to the cross-objectors are re-

worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Kishan Chand
(ii)	Date of accident	20.01.1997
(iii)	Age of the deceased	49 years
(iv)	Monthly income of the deceased	₹ 5733/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 5733+₹2293)= ₹ 8026/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 8026-₹2006) = ₹ 6020/- per month
(vii)	Compensation calculated after applying the multiplier of 13	(₹6020X12X13) = ₹ 9,39,120/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
<i>Total</i>		₹ 1,009,120/-

13. As a sequel of my discussion above, the main appeal (FAO No. 1607 of 2001) is dismissed. However, the cross-objections have merit and the same are partly accepted. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 1,009,120/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

(JAISHREE THAKUR)
JUDGE

4.2.2019
prem

Whether speaking/reasoned
Whether reportable

Yes
No