

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

FAO No. 4414 of 2014 (O&M)

Date of decision : April 11, 2019

Suraj Kumar

.....Appellant

Versus

Harjeet Singh and others

....Respondents

FAO No. 8057 of 2014 (O&M)

Harjeet Singh and another

.....Appellants

Versus

Suraj Kumar and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Dheeraj Narula, Advocate
for the appellant (in FAO-4414-2014)

Mr. N.K. Manchanda, Advocate
for the appellants (in FAO-8057-2013) and
for respondents No. 1 and 2 (in FAO-4414-2014)

Mr. D.K. Dogra , Advocate
for respondent No. 2 (in FAO-8057-2013) and
for respondent No. 3 (in FAO-4414-2014)

LISA GILL, J.

This judgment shall dispose of FAO Nos. 4414 and 8057 of 2014, which arise out of award dated 17.10.2013 passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal').

Brief facts necessary for adjudication of the case are that the claimant i.e. son of Babu Lal (deceased) filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Babu Lal on 10.05.2012 in a motor vehicle accident caused due to rash and

negligent driving of the offending vehicle Bus bearing registration No. PB-30D-9825 by respondent No.1. It was averred that Babu Lal (deceased) alongwith his son Suraj Kumar was going from Kotkapura in Bus bearing registration No. PB-30D-9825, which was overloaded and passengers were travelling on its roof. The deceased and his son were also made to sit on the roof top of the bus. The bus was being driven in a rash and negligent manner without caring about the safety of passengers made to sit on the roof top. When they reached near Singowali Dhani near Lambi, the driver took the bus to the extreme left side of the road and an overhanging branch of a tree stuck against Babu Lal due to which he fell on the road and died due to injuries sustained by him.

Learned Tribunal on considering the evidence on record found the testimony of PW1 Suraj Kumar (son of the deceased) to be reliable and trustworthy. It was held that the accident in question was caused due to rash and negligent driving of the offending vehicle bus by its driver - respondent No. 1. However, it was observed that the claimant was not dependant upon the deceased i.e. his father. Therefore, he was awarded a sum of ₹32,000/- i.e. ₹25,000/- towards loss of love and affection, ₹2,000/- towards funeral expenses and ₹2,500/- each towards loss of estate and transportation charges. It was further directed that as the deceased was travelling on the roof top due to over crowding of the bus, which was necessarily beyond 52 passengers insured by the insurance company, therefore, liberty was afforded to the insurance company to recover the amount of compensation from the owner of the bus, by filing separate proceedings before the court of competent jurisdiction.

FAO No. 8057 of 2014 has been filed by the driver and owner

of the offending vehicle i.e. Bus bearing registration No.PB-30D-9825, challenging the liberty afforded to the insurance company to recover the amount of compensation from the owner of the bus.

FAO No. 4414 of 2014 has been filed by the claimant seeking enhancement of the compensation awarded by the learned Tribunal.

Learned counsel for the driver and owner of the vehicle submit that the insurance company cannot be afforded any right to recover the amount in question from the appellants (in FAO No. 8057 of 2014) as there is no breach of any of the conditions of the policy.

Learned counsel for the claimant submits that the learned Tribunal has erred in awarding a mere sum of ₹32,000/- to the claimant. Even if the claimant is proved to be earning some amount, he could not be denied the amount calculated under the head of loss of dependancy. The claimant was living alongwith his father and was primarily dependant on his father for his basic needs. He relies upon the judgment of this Court in **Smt. Gurdev Kaur and others versus Jharmal Singh and another 2017 (3) PLR 8**. It is, thus, prayed that appropriate compensation in terms of judgments of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009** and **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333**, be afforded.

Per contra, learned counsel for the respondent - insurance company submits that there was overloading of the bus and passengers were made to sit on the roof top. There is, thus, a clear cut breach of the conditions of insurance policy, therefore, recovery rights have been rightly afforded to the insurance company. In respect to the enhancement of the

compensation, it is vehemently, argued that once the appellant has himself admitted that he was earning about ₹2,000/- per month, there is no question of affording any further compensation to him. It is thus, prayed, that both these appeals be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute that Babu Lal died in a motor vehicle accident, which took place on 10.05.2012 caused due to the rash and negligent driving of bus bearing registration No. PB-30D-9825 driven by respondent No. 1. There is no evidence on record to refute the stand of the claimant that the deceased and his son were travelling on the roof top of the bus, if not on the asking of the bus driver/conductor, at least with the driver having positive knowledge of their presence on the roof top. Evidence on record proves that death of Babu Lal took place due to the rash and negligent act of the bus driver. However, the question whether the insurance company in such a situation can be absolved has been answered by a Division Bench judgment of this Court in **Oriental Insurance Co. Ltd. versus Smt. Meena Devi and others 2012 (2) RCR (Civil) 334**, wherein it has been specifically held that in case the passengers are travelling on the roof top of a bus, insurance company cannot be absolved of its liability. Relevant paras of the judgments are reproduced hereunder:

“17. In view of the said judgment and the consistent view of various High Court 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 of death or injury suffered by the passengers travelling on the roof top.

18. 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.”

In the present case, it is admittedly one passenger, who has lost his life. Therefore, right to recover the amount in question has been wrongly afforded to the insurance company.

In respect to the claim of the appellant - Suraj Kumar, son of the deceased, learned Tribunal while observing that the claimant who has himself admitted to be working as a painter, earning about ₹2000-3000/- per month is not entitled to anything over and above ₹32,000/- as detailed above. It is not in dispute that the claimant – appellant aged about 25 years was living with his father, who was earlier employed with Railway Department at Sirsa. Babu Lal had sought voluntary retirement in the year 2004 and was thereafter engaged in doing painting work of buildings. He was claimed to be earning ₹10,000/- per month in this manner and drawing pension to the tune of ₹5,000/- as well. The deceased and his son were living together. PW1 has specifically denied the suggestion that he was not dependent upon his father. There is no evidence on record to the contrary.

In the case of **Smt. Gurdev Kaur** (supra), it has been observed that even where a son is major and is earning, he does not stop looking to his father for financial help. In the said case, it is specifically observed that, it is not as if the sons of the deceased were drawing big salaries and were not in need of contribution from their father, therefore, appropriate compensation on account of death of their father was awarded to them. In the present case as well, the claimant was living with his father (deceased) and was earning a meagre amount by working as a Painter. It is relevant to note that the deceased Babu Lal was claimed to be working with the Railway department at Sirsa, having sought voluntary retirement in the year 2004 and thereafter doing painting work of buildings. Clearly, the claimant must have been working alongwith his father. Therefore, the learned Tribunal has erred in awarding only a sum of ₹32,000/- to the claimant. The claimant has proved on record Exs. P3 and P4 i.e. pension payment orders/revised pension payment order of the deceased, which reveals that the deceased was in receipt of ₹3,500/- as pension. Minimum wage of an unskilled labourer in the State of Haryana at the time of accident is Rs.4,847/- per month.

The deceased was about 54 years old at the time of the accident, his date of birth being 12.11.1957. It appeals to a common sense that he would be gainfully employed as it is a matter of record that Babu Lal had sought premature retirement from the Railway department way back in 2004 i.e. about eight years prior to the fateful accident. At that age he would necessarily be engaged in same useful activity to earn his living and support his family. There is, however, no evidence on record to indicate the exact income earned by the deceased being engaged in a particular vocation. His

income apart from the family pension can be assessed with reference to the minimum wage of a daily wager in the State of Haryana at the relevant time. Income of the deceased is, thus, assessed as ₹8,347 (₹3500+₹4847). In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 10% (₹835/-) is afforded, as the deceased was 54 years old at the time of accident, which takes income of the deceased to ₹9,182/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), 50% deduction is to be applied, thereby rendering income of the deceased to be ₹4591/-(9182-4591). Applying a multiplier of 11, dependency of the claimant is assessed as ₹6,06,012/- (₹4591x12x11). The claimant is entitled to ₹15,000/- each for funeral expenses and loss of estate. Appellant is also entitled to ₹40,000/- on account of loss of parental consortium. Reference in this respect can gainfully be made to the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others.**

Claimant is, thus, entitled to total compensation of ₹6,76,012/- detailed as under:-

Loss of dependency(₹4591x12x11)	₹6,06,012/-
Loss of parental consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹6,76,012/-

The amount of compensation already awarded to the appellant,

needless to say, shall stand deducted from the amount calculated as above.

Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, FAO No. 4414 of 2014 filed by the claimant - appellant is disposed of and FAO No. 8057 of 2014 filed by the driver and owner is allowed.

April 11, 2019
rts

(Lisa Gill)
Judge

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