

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

473

FAO-1246-2015 (O&M)
Date of Decision: 23.09.2022

Anita Rani and others

---Appellants

versus

Kapil @ Bindu @ Pintu @ Shanti and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Dheeraj Narula, Advocate
for the appellants.

Mr. Sunil Kumar Nehra, Advocate
for respondent No.1.

Mr. Hardeep Singh Poonia, Advocate for
Mr. Rajesh K. Sheoran, Advocate
for respondents No.2 and 3.

Mr. Paul S. Saini, Advocate
for respondent No.4.

JAGMOHAN BANSAL, J. (ORAL)

1. The appellants through instant appeal are seeking enhancement of compensation awarded vide award dated 11.11.2014 passed by Motor Accident Claims Tribunal, Sirsa (for short 'Tribunal') whereby Tribunal has awarded a sum of Rs. 4,60,600/- along with interest @ 7½ % per annum from the date of filing of the claim petition.

2. The facts emerging from record and necessary for the adjudication of present appeal are that on 30.01.2014 Ramesh Lal along with his son Ravi Kumar boarded a bus bearing registration

No. HR-57-3096. Due to overcrowd, Ramesh Lal (deceased) and his son Ravi Kumar could not get seat and they stood at foot steps of gate of the bus. The driver suddenly applied brake and Ramesh Lal fell down from the bus. He was crushed by rear wheel of the said bus. He was shifted to General Hospital, Sirsa where he was declared dead. The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Ramesh Lal. The Tribunal vide order dated 11.11.2014 determined amount of compensation Rs. 4,60,600/-, however, holding deceased partially responsible for accident, awarded 50% of the compensation to the appellants.

3. Learned counsel for the appellants submitted that Tribunal has wrongly fastened partial responsibility upon deceased. There was no reason to hold that there is contributory negligence on the part of the deceased. He further submitted that amount of compensation needs to be re-determined in the light of judgement of a five-Judge Bench of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and a three-Judge Bench judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121**. Learned counsel for the appellants submitted that accident took place on 30.01.2014 and at that point of time, minimum wages of unskilled labourer was Rs.5550/- whereas the Tribunal has assessed income of deceased Rs.5,000/-

4. Learned counsel for insurer supporting findings of the

Tribunal contended that deceased was standing on doorsteps of bus, thus, there was contributory negligence on the part of deceased and drive of bus cannot be held exclusively responsible for the accident. He conceded that total amount of compensation may be re-determined in view of afore-cited judgments of Hon'ble Supreme Court. He further does not dispute that minimum wages as prescribed by State Government during January 2014 was Rs.5500/-.

5. I have perused the record and heard arguments of both sides.

6. On being asked, learned counsel for appellants pointed out that during the course of proceedings before learned trial Court, son of deceased who was accompanying him has deposed that bus was overcrowded. Learned counsel for Insurer could not controvert this fact.

7. It is well known fact that buses either private or State controlled transport undertakings are normally overcrowded. People are forced to stand alley as well footsteps. The deceased was 55 years old, thus, there was no question for such an aged person to stand at foot steps had there been seats available to occupy. It is very tough to travel while standing in alley or on foot steps, however, inspite of expiry of a quite long time from independence, people are forced to travel in overcrowded buses and trains. On the one hand, transporter is unable to provide seat to sit inspite of charging fare as good as a commuter occupying seat still in case of accident, it is pleaded that commuters are responsible for standing at foot steps.

8. In such circumstances, I find that the Tribunal ignoring the ground realities has held that there was contributory negligence on the part of the deceased. I am of the considered opinion that deceased by no stretch of imagination can be held negligent. The entire liability was of driver/owner of the vehicle. It would be totally unfair to hold that there was contributory negligence on the part of the deceased. Thus, the appellants are entitled to full amount of compensation.

9. Both the parties conceded that amount of compensation needs to be re-determined as per judgements of Hon'ble Supreme Court in **Pranay Sethi's case (supra)** and **Smt. Sarla Verma's case (supra)**. The minimum wages during January 2014 was Rs.5500/- per month. Accordingly, income of deceased is re-assessed Rs.5500/- per month. Accordingly, the amount of compensation is re-determined as below:-

Particulars	Amount of compensation (in Rs.)
Annual income of the deceased	66000
Future prospects	10.00%
Income after addition of future prospects	72600
Deduction on account of personal expenses	1/4 th
Assessed income	54450
Multiplier (11)	5,98,950
Loss of estate	15000
Loss of consortium	2,00,000
Funeral expenses	15000
Total	8,28,950

10. The appellants are entitled to interest @ 7.5% on enhanced amount from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

11. The respondents are directed to make payment within a period of eight weeks from today.

12. The appeal is disposed of in the above-stated terms.

(JAGMOHAN BANSAL)
JUDGE

23.09.2022

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