

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

(1) FAO-2970-2018 (O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Savita Rani and others

...Respondents

(2) FAO-1658-2019 (O&M)

Savita Rani and others

...Appellants

Versus

New India Assurance Company Ltd., and others

...Respondents

Date of Pronouncement: 02.12.2022

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vinod Chaudhri, Advocate for the appellant
in FAO-2970-2018 and for respondent No.1
in FAO-1658-2019.

Mr. Sandeep Jasuja, Advocate for the appellants
in FAO-1658-2019 and for respondents No.1 to 4
in FAO-2970-2018.

Mr. D.R. Singla, Advocate for
Mr. Inderjeet Sharma, Advocate for respondents No.5 and 6
in FAO-2970-2018 and for respondents No.2 and 3
in FAO-1658-2019.

H.S. MADAAN, J.

CM-6322-CII-2019 in FAO-1658-2019

Notice in the application.

Sh. Vinod Chaudhri, Advocate appearing in the connected

matter accepts notice on behalf of respondent No.1 and Mr. D.R. Singla, Advocate for Mr. Inderjeet Sharma, Advocate has accepted notice on behalf of respondents No.2 and 3.

The appeal has been filed belatedly by 287 days. In view of the reasons mentioned in the application and in the interest of justice, such delay stands condoned.

Application stands disposed of accordingly.

Main Case(s)

By this judgment, I intend to dispose of above mentioned two appeals arising out of the same award/judgment.

2. One Surinder Kumar Narula, stated to be a specialist in Chicks Debeaking and repairing of automatic Debeaking machine, earning about Rs.25,000/- per month and an income tax assessee, aged about 70 years had died in a motor vehicular accident which took place on 05.06.2016 statedly on account of rash and negligent driving of bus bearing registration No.PB-29-R-9700 (for short 'the offending bus') by respondent No.2 Balwinder Singh inasmuch as the deceased who was standing at the rear door of the bus fell there from and received multiple injuries on his head, eyes and other parts of the body to which he had succumbed. The accident had taken place about one km near bus stand Mullanpur Dakha. LRs of deceased i.e. Smt. Savita Rani, widow, aged about 61 years, sons Suresh Kumar, aged about 39 years, Sunil Kumar, aged about 37 years, Vishal Narula, aged about 35 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against

respondents i.e. Jujhar Passenger Bus Service Pvt. Ltd. Moga-owner, Balwinder Singh-driver and New India Assurance Company Ltd., Ferozepur-insurer of the offending bus.

3. Notice of that claim petition was given to the respondents. All three of them had put in appearance through counsel.

4. Respondents No.1 & 2 had filed a joint written statement, whereas, respondent No.3-insurance company had filed a separate written statement. However, all three of them contested the claim of claimants.

5. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the Motor Accidents Claims Tribunal, Fazilka (for brevity 'the Tribunal'), vide award dated 04.01.2018, accepted the claim petition and granted compensation of Rs.6,22,000/- to the claimants along with interest and costs, payable by all the three respondents jointly and severally.

7. This award left respondent No.3-insurance company aggrieved and it has filed the present appeal bearing No.FAO-2970-2018. The claimants in the claim petition were also not happy with the amount of compensation awarded to them and they have approached this Court by way of filing separate appeal bearing No.FAO-1658-2019. Notices of the appeals were given to the respondents who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the appellant-insurance company has attacked the impugned award mainly on two grounds; firstly that negligence on the part of the bus driver is not established rather the deceased himself was negligent and if the Court does not agree with this contention, then it be taken as case of contributory negligence, since the deceased by his own act and conduct had contributed to happening of the accident. However, I do not find myself in agreement with counsel for the appellant-insurance company in that regard. The Tribunal has dealt with the matter in a very proper and appropriate manner considering the facts and circumstances of the case, the evidence available on the file and settled legal position. In the discussion, while deciding issue No.1 which is to the effect that whether death of deceased Surinder Kumar Narula took place due to rash and negligent driving of the offending vehicle by respondent No.1, the Tribunal observed that deceased started travelling in the offending bus from Mullanpur Dakha and he was coming to his house at Ludhiana. Respondent No.2 Balwinder Singh driver of the bus in question drove it at a high speed and in a rash and negligent manner and when the bus in question reached about one km near bus stand Mullanpur Dakha, then respondent No.2 suddenly applied brakes, at that time, the deceased was standing at a sufficient distance of the rear door of the bus in question, however, due to such act on the part of Balwinder Singh driver in applying brakes suddenly, the deceased fell down from the bus on the road and he had received multiple injuries on his head, eyes and other parts of the body. He was taken to Medicity Hospital, Ludhiana where he had died.

10. Though, FIR in this case was not lodged and only a DDR was entered but the Tribunal observed that contents of the DDR were sufficient to corroborate the version of the claimants that deceased Surinder Kumar Narula died in the accident by falling from the offending bus. The registration number of the offending bus is mentioned in the DDR Ex.C1 and it is not denied by the respondents that respondent No.2 was driving the bus at that time. Proceedings under Section 174 Cr.P.C., were conducted in this case. Post mortem examination on the dead body of deceased Surinder Kumar Narula was also carried out. Copy of post mortem report being Ex.C2. As against that respondents No.1 and 2 in their joint written statement have denied that deceased was travelling in the offending bus, however, claimants have successfully proved that it was so and that Balwinder Singh respondent No.2 by driving the offending bus negligently inasmuch as he had applied the brakes of the bus all of sudden, resultantly, the deceased who was standing at the sufficient distance from rear gate of the bus fell down from the bus in question on the road and received multiple injuries to which he later on succumbed. Respondent No.2 Balwinder Singh could not summon courage to step into the witness box and to depose that the deceased was not travelling in the offending bus being driven by him or that he was not driving the bus in a rash and negligent manner. Respondents No.1 and 2 had only tendered photocopy of resolution, copy of RC of offending bus and copy of driving license of driver Balwinder Singh. Therefore, evidence led by the claimants that Balwinder Singh respondent No.2 was

author of the accident by his rash and negligent driving resulting in death of Surinder Kumar Narula stands established on record.

11. The Tribunal has relied upon judgment **United Insurance Company Ltd. Vs. Dharma Ram & Ors., 2009 ACJ 918**, wherein it was observed that even if the proceedings under Section 174 Cr.P.C., are conducted, the claim can be given under Section 166 of the Motor Vehicles Act for the reason that death was caused on account of vehicular accident. The findings recorded by the Tribunal on issue No.1 is proper and appropriate and does not call for any interference. It is clear from the record that Surinder Kumar Narula deceased had fallen from the bus due to jerk caused on account of sudden applying of brakes by its driver and it is certainly not a case of contributory negligence. The respondents have neither pleaded nor led any evidence to show that the deceased by his own act and conduct had also contributed towards happening of the accident in which he had lost his life. Therefore, this arguments by learned counsel for the appellant-insurance company does not cut any ice and is rejected.

12. With regard to submission made by learned counsel for the appellant-insurance company that the compensation awarded is on very high side . I find that the Tribunal has taken age of the deceased to be 70 years, which has been rightly done considering the evidence available on the record including attested copy of DDR Ex.C1 and his post mortem report Ex.C2 as against the claim made by the claimants that deceased was earning Rs.25,000/- per month by working as specialist in Chicks

Debeaking and repairing of automatic Debeaking machine. The Tribunal considering the income tax return of the deceased for the assessment year 2013-14 Mark 1, reflecting his gross total income to be Rs.1,25,260/-, copy of income tax return for the assessment year 2014-15 Mark 2, showing gross total income of the deceased of Rs.1,28,220/- and copy of income tax return for the assessment year 2015-16 Mark 3, showing gross total income of the deceased of Rs.1,31,190/-, took his monthly income to be Rs.10932/- and ordered deduction of 1/4th towards personal and living expenses of the deceased, keeping in view the number of his family members.

13. However, I find that considering the age of the deceased, ages of his three sons, all of them being major, deduction of 1/3rd should have been made, which comes out to Rs.3644/- per month and dependency of the claimants being Rs.7288/-, annual dependency comes out to Rs.87,456/-.

14. Multiplier of 5 has been rightly used by the Tribunal. In that way, the total compensation is worked out to Rs.4,37,280/-. The claimants are entitled to get Rs.15,000/- each under the head loss of estate and funeral expenses. Furthermore, claimant Savita Rani, widow of the deceased is entitled to get compensation under the head loss of consortium whereas claimants No.2 to 4 who are sons of deceased are also entitled to get Rs.40,000/- each to be filial compensation. The total amount this comes out to Rs.1,90,000/-. The compensation is thus, worked out to Rs.6,27,280/-.

15. The Tribunal has awarded compensation of Rs.6,22,000/-.

Therefore, the impugned award is modified and instead of compensation of Rs.6,22,000/-, compensation of Rs. 6,27,280/- is granted to the claimants, payable by all the three respondents jointly and severally with interest @ 9% p.a., from the date of filing of claim petition till actual realization. All the claimants would share the compensation awarded in equal shares. 50% would go to claimant No.1 Savita Rani-widow of the deceased, whereas, remaining 50% shall be shared by the claimants No.2 to 4 in equal shares. Accordingly, the appeal bearing No.FAO-2970-2018 filed by the insurance company is dismissed. The connected appeal bearing No.FAO-1658-2019 seeking enhancement of compensation stands allowed partly.

02.12.2022

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No