**FAO-1028-2012 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****FAO-1028-2012 (O&M)****ORIENTAL INSURANCE COMPANY LIMITED****..Appellant****Versus****KAVITA AND ORS.****..Respondents****Reserved on: 17.04.2026
Pronounced on: 13.05.2026
Uploaded on : 15.05.2026**

Whether only the operative part of the judgment is pronounced? **NO**
Whether full judgment is pronounced? **YES**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

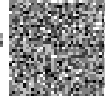
Present: Mr. Sanjiv Pabbi, Advocate
for the appellant – Insurance Company.

Mr. M.S. Randhawa, Advocate
for respondent Nos.1 to 3.

Mr. Paras Kukkar, Advocate
Mr. Munish Gupta, Advocate
for respondent No.4.

SUDEEPTI SHARMA, J.

1. The present appeal has been filed by the appellant-Insurance company against the award dated 02.11.2011 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal'), wherein the claim petition filed by the claimants was allowed and appellant-Insurance company was held liable to pay the compensation.

**BRIEF FACTS OF THE CASE**

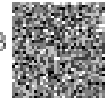
2. Brief facts of the case are that the deceased was statedly travelling on the roof of bus No.RS-18P-0195. The bus was owned by Naresh Kumar, respondent No.2 and it was bring driven by Rajesh Kumar, respondent No.1. The driver was allegedly driving the bus at a high speed in rash and negligent manner. He had taken the bus to lower side of the road and as a result, the deceased came in contact with the hanging electricity wires. He was electrocuted and died on the spot. The accident was reported to the police and FIR No.97 dated 12.03.2009 under Sections 279, 337 and 304-A IPC was registered at Police Station City Narnaul. The deceased was 30 years old and was stated to be earning Rs.13,877/- out of his employment in Indian Army. The post mortem examination on the body of the deceased was conducted at Govt. Hospital, Narnaul. The claimants have prayed for a compensation of Rs.30,00,000/-.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing their separate written replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

“1. Whether Parmod Kumar son of Chandgi Ram died in a road accident which took place on 12.03.2009 on Heor Honda Chowk, Singhana Road, Narnaul (Police Station city Narnaul) due to rash and negligent driving on the part of respondent No.1, the driver of bus No.RJ-18P-0195? OPP

2. Whether driver of the vehicle in question did not hold a valid driving licence, if so to what effect? OPR-3



3. *Whether the petitioners are entitled to award of compensation and if so, how much and from whom? OPP*
4. *Relief.*”

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. Learned counsel for the appellant–Insurance Company contends as under:-

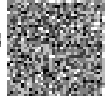
(i) that the learned Tribunal has erred in holding that accident occurred due to sole negligence of the driver of offending vehicle.

(ii) that deceased himself was negligent in as much as he himself boarded the roof of the bus and he himself contributed towards injuries sustained by him as a result of which, he passed away. Therefore, he prays that the present appeal be allowed.

8. Per contra learned counsel for claimant/respondents No.1 to 3 contends that issue of rash and negligence has rightly been decided by learned Tribunal. Therefore, he prays that the present appeal be dismissed.

9. I have heard learned counsel for the parties and perused the whole case file with their able assistance.

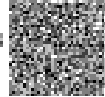
10. Before proceeding further, it is necessary to reproduce the relevant portion of the award, which reads as under:-

***“ISSUE NO.1***

9. Claimants have averred in paragraph No.24 of the petition that the deceased was travelling in the bus alongwith Rampal son of Harphool Singh and Satish son of Raj Kumar. Out of these two persons, Rampal was examined as PW4. He has narrated the manner of accident. According to him, he alongwith deceased had boarded the roof of bus No.RJ-18P-0195 on the asking of bus conductor and the bus was being driven in a rash and negligent manner by its driver. The witness has indicated that the deceased in order to stop the driver from rash and negligent driving had stood up on the roof and shouted at the driver to drive properly. Thereupon, the driver took the bus to the lower side of the road and as a result, the deceased came in contact with live wires hanging on side of road.

10. Neither the conductor nor the driver of the bus was produced by the respondents to rebut the aforesaid testimony of Rampal PW4. So, the version of the accident as narrated by Rampal PW has to be taken as correct.

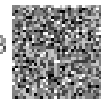
11. The matter can be viewed even from a different angle. The police has registered FIR and had investigated the case. The claimants have examined PW5 Ram Karan ASI, the investigating officer. His deposition was that the accident had taken place because respondent No.1 while driving the bus had taken it on kachcha berm where the electric wires were hanging and the deceased was thereby electrocuted. He has further indicated in his deposition that SHO Satpal Singh had prepared challan. It is, therefore, proved even from the evidence of investigating agency that respondent No.1 was responsible for causing the accident by his rash and negligent driving.



12. Learned counsel for the respondents have argued that the deceased was himself negligent and responsible for sustaining the injuries because he had boarded the roof of the bus. The Tribunal regrets its inability to accept the argument because it has come in evidence that the deceased travelled on the roof per directions of the conductor as the bus was overcrowded and therefore, the driver was expected to be more careful in driving. It is in the evidence of PW4 that the deceased stood up on the roof top of the bus in order to ask the driver to be careful and that the deceased got electrocuted when the driver had taken the bus near to the electric wires. The negligence is, therefore, attributable only to the driver of the bus and the respondents cannot be allowed to claim that the deceased got electrocuted because of his own negligence. The Tribunal has, therefore, no hesitation in deciding this issue in favour of the claimants holding that the deceased had died due to rash and negligent driving on the part of respondent No.1, the driver of bus No.RJ-18P-0195.”

11. A perusal of the record reveals that the findings recorded by the learned Tribunal on Issue No.1 do not suffer from any illegality or perversity warranting interference by this Court. The learned Tribunal has appreciated the oral as well as documentary evidence in its correct perspective and has returned a well-reasoned conclusion regarding rash and negligent driving on the part of respondent No.1, the driver of bus No. RJ-18P-0195.

12. The claimants had specifically pleaded that the deceased was travelling on the roof of the bus along with Rampal son of Harphool Singh and Satish son of Raj Kumar. In support of the said plea, Rampal appeared in the witness-box as PW4 and gave a cogent and trustworthy account of the

**FAO-1028-2012 (O&M)****-6-**

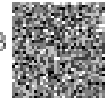
occurrence. He categorically deposed that the bus was overcrowded and, on the asking of the conductor, he and the deceased were constrained to travel on the roof of the bus. He further stated that the bus was being driven in a rash and negligent manner and that the deceased had stood up merely to caution the driver to drive carefully, whereupon the driver took the bus towards the kacha berm of the road, causing the deceased to come into contact with the live electric wires hanging by the roadside, resulting in his electrocution.

13. Significantly, neither the driver nor the conductor of the offending bus entered the witness-box to rebut the testimony of PW4. An adverse inference, therefore, was rightly drawn against them. The statement of PW4 remained unshaken in cross-examination and there was no material brought on record to discredit his version. The learned Tribunal was, thus, fully justified in placing reliance upon his testimony.

14. Apart therefrom, the version put forth by the claimants also stands corroborated from the evidence of PW5 Ram Karan, ASI, the Investigating Officer, who categorically deposed that during investigation it was found that respondent No.1 had driven the bus towards the kacha portion of the road where low-hanging electric wires were present and, as a consequence thereof, the deceased suffered fatal electrocution. The registration of FIR and submission of challan against the driver further lend assurance to the case set up by the claimants.

15. The contention raised on behalf of the appellant that the deceased himself was negligent in travelling on the roof of the bus has rightly been rejected by the 1d.Tribunal. Once it has come in evidence that

the bus was overcrowded and the passengers were permitted, rather compelled,



FAO-1028-2012 (O&M)

-7-

by the conductor to travel on the roof, a corresponding duty of greater care was cast upon the driver. Merely because the deceased was travelling on the roof of the bus would not *ipso facto* amount to contributory negligence, particularly when the immediate and proximate cause of the accident was the rash and negligent act of the driver in steering the vehicle towards the side of the road where live electric wires were hanging at a dangerously low height.

16. At this stage, reference may also be made to the judgment of the Division Bench of this Court in ***Oriental Insurance Co. Ltd. v. Smt. Meena Devi and others, 2012 (2) RCR (Civil) 334***, wherein it has been categorically held that merely because a passenger was travelling on the roof top of the bus, the Insurance Company cannot avoid its statutory liability. It was further held that in the case of death of a passenger, the liability of the Insurance Company is unlimited and the insurer remains liable to satisfy the entire award. The relevant observations read as under:-

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

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.”

17. In view of the aforesaid settled proposition of law as well, the plea sought to be raised by the appellant-Insurance Company regarding

alleged contributory negligence of the deceased on account of travelling on the roof of the bus deserves outright rejection.

18. The finding recorded by the learned Tribunal that the accident occurred solely due to the rash and negligent driving of respondent No.1 is, therefore, based upon proper appreciation of evidence and settled principles of law and calls for no interference by this Court.

19. In view of the above discussion, the present appeal is hereby dismissed being bereft of any merit.

20. Pending miscellaneous applications, if any, are also disposed of.

13.05.2026

Ayub/Sahil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No\

(SUDEEPTI SHARMA)

JUDGE