

## National Insurance Company Ltd. Vs Jagwinder Kaur

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Jan. 28, 2014

**Citation:** (2015) ACJ 1128 : (2014) 175 PLR 437

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Advocate:** L.M. Suri, Senior Advocate and Neeraj Khanna, Advocate for the Appellant; I.S. Brar, H.S. Sawhney, Senior Advocate and B.S. Giri, Advocate for the Respondent

**Final Decision:** Dismissed

### Judgement

K. Kannan, J.

Both the appeals arise out of the same accident involving the death of 19 years old boy said to be travelling atop a bus. The

Tribunal has assessed a compensation of Rs. 1,40,000/- at the instance of the mother. The deceased was said to be an agriculturist earning Rs.

2100/- and the Tribunal adopted a differential multiplier assuming that the contribution to the family must be high for a few years upto the date

when he would be married and reduced the loss of dependence to a lesser amount and applied a multiplier for the remaining number of years. The

insurance company in appeal in FAO No. 1064 of 2000 has a contention to make that the driver did not have a driving licence and therefore, the

Tribunal could not have fastened the liability on the insurer without providing for a right of recovery against the owner and the driver. The counsel

would point out to me the evidence of Balraj Kaur, RW 2, who was said to have made a verification to state that the driving licence had not been

issued. However, she had not herself brought the original register. Yet another witness, who had been examined was RW 3 stated that one

Harwinder Kaur had made an endorsement that the verification had been made and driving licence No. 3904 had not been issued by DTO,

Amritsar. As against this evidence, the owner had produced evidence through RW 4, which was a report submitted by the surveyor deputed by

the National Insurance Company itself to verify the licence of Baljit Singh. He had come with a different story of a verification as having been done

by the DTO, Amritsar and prepared a report stating that there had been a valid licence issued by DTO Amritsar under Sr. No. 3904 dated

24.03.1992 which was valid from 24.03.1992 to 22.03.1998. The witness also spoke about the fact that he had collected fee of Rs. 250/- for

making this verification. Swaran Singh, a Clerk of the DTO was the person, who had caused this verification to be made and beneath the witness

RW 4 had the statement that licence had been genuine. In a situation where the original documents themselves could not be brought from the DTO

office and when there was also evidence that records had been burnt at the DTO Office, the Tribunal did what it could best do and relied on the

evidence provided through the insurance company itself through one of his paid agents who secured a report in favour of driver and against the

insurance company. The Tribunal before it had all the varying versions and it came to the conclusion that the driving licence was true and if there

are two views possible and the Tribunal had taken a particular view, I have no reason for me to substitute my own. I, therefore, confirm the validity

of the licence.

2. As regards the issue of negligence, the learned Senior Counsel appearing for the insurance company would point out that the insurance cover is

invariably reckoning the fact of seating capacity of the bus and was required to cover the liability of passengers inside the bus only with a particular

seating capacity. The, deceased was a person travelling on the top of the bus and if he had come into the contact of a hanging branch of tree, it

must be taken that he was himself responsible and in any event, he must be taken as having been guilty of contributory negligence. It is invariably a

question of fact of who had contributed to the accident and whether there had been any serious breach of terms of the policy that would allow the

insurance company to plead for exclusion of liability. It does not require forensic appraisal to know that the passenger is normally understood as a

person, who travels within the bus and within the travelling capacity of the bus. If there had been an overcrowding of the bus where there are some

persons hanging by the footboard and there are persons who travelled on top of the bus, there is a greater responsibility of the driver and

conductor of the bus that such an incident did not take place. The driver of the bus must stop and conductor must show that all the persons

standing on the footboard are properly alighted from the bus before the vehicle is set on motion again. The same must apply to passengers who

were travelling atop the bus. If there has been any specific evidence in the case that the driver and conductor remonstrated against the persons

travelling on the top of the bus and there had been a defiance shown by the passengers who were standing on the footboard or any person was

travelling on top of the bus, then it can be stated that he was guilty of contributory negligence. If the conductor would take no action and would

allow for some persons to travel on top of the bus, it could be taken that negligence of the conductor and driver is writ large. The Motor Vehicles

Act is a beneficial legislation and it must be stretched to accommodate any claim which is not illegal. I will not apply contributory negligence to a

situation where the person was travelling on top of the bus. Barring exceptional situation of adventurism, I would believe that no person likes to

travel on top of the bus or travel on the footboard. Specific instances must be brought of such adventurous conduct and conduct which was defiant

of the specific instructions. If there is no such evidence available, I will lean in favour of the claimant to uphold the claim as tenable and make the

insurer liable for the same. I will, therefore, discard the argument made that the deceased was guilty of contributory negligence and I will proceed

to assess the compensation on the accepted norms of schedule in the compensation providing for a prospect of increase and apply for a multiplier

on a standard basis in the manner laid down by the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and

Another, and explained by subsequent decisions. There is no scope for settling the multiplier for two different terms of one upto the date when he

could have married and a lesser sum of dependence subsequently. I will take the average income of the deceased providing even for prospect of

future increase at Rs. 3,000/- apply 50% deduction on the same as going towards the personal expenses and take the loss of dependence after

applying a multiplier of 18 at Rs. 3,24,000/-. I will add towards the conventional heads of claim for loss of love and affection, loss to estate and

funeral expenses an additional amount of Rs. 11,000/- and round off the compensation payable at Rs. 3,35,000/-. The amount in excess what has

been awarded by the Tribunal shall also attract interest @7.5% from the date of petition till the date of payment. The award passed by the Tribunal

stands modified. The appeal filed by the claimants in FAO No. 917 of 2000 is allowed and the appeal in FAO No. 1064 of 2000 is dismissed.