

(2014) 01 P&H CK 0141

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 1064 and 917 of 2000

National Insurance
Company Ltd.

APPELLANT

Vs

Jagwinder Kaur

RESPONDENT

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.