

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

(205)

FAO No. 42 of 2000(O&M)

Reserved on: 01.10.2025

Pronounced on: 13.10.2025

M/s The Oriental Insurance Co. Ltd.

...Appellant

Versus

Rajwant Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Sahej Mahajan, Advocate,
for the appellant-Insurance Company

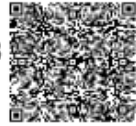
Mr. Sehej Sandhawalia, Advocate, Legal Aid Counsel,
for the respondents

VIRINDER AGGARWAL, J.

1. The present appeal by the Insurance Company is directed against the award dated 11.08.1999 passed by the Motor Accident Claims Tribunal, Gurdaspur, whereby compensation of ₹2,70,000/- along with interest at rate of 12% per annum from the date of petition has been awarded to the claimants on account of death of Dilbagh Singh in a motor accident.

FACTUAL BACKGROUND

2. Dilbagh Singh, aged about 27 years, was working as a conductor with respondent No.2, owner of bus bearing no. PB-06-1110. On 13.08.1997, while the bus was on its way from Kalanaur to Dera Baba Nanak for repairs, it struck against a tree near Shahpur Goraya and turned turtle. Dilbagh Singh sustained serious injuries and died on the way to the hospital. His widow Rajwant Kaur,

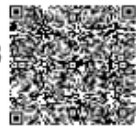


two minor daughters and mother filed a claim petition under Section 166 of the Motor Vehicles Act seeking compensation of ₹5,00,000/-, alleging that they were fully dependent on his income.

3. The learned Tribunal held that the accident had occurred due to mechanical defect in the bus, but nevertheless, the claimants were entitled to compensation as death arose out of the use of the motor vehicle. Monthly income of the deceased was assessed at ₹2100, dependency fixed at ₹1500, and by applying a multiplier of 15, total compensation was determined at ₹2,70,000/- along with interest at rate of 12% per annum from the date of petition. Liability was fastened upon the appellant-Insurance Company as the bus stood duly insured on the date of accident, and the compensation was ordered to be apportioned amongst the widow, children, and mother of the deceased.

CONTENTIONS

4. Learned counsel for the appellant contended that the learned Tribunal erred in fastening liability on the appellant-Insurance Company despite recording a finding that the accident occurred due to mechanical defect and not rash or negligent driving. It was urged that no postmortem was conducted to establish that Dilbagh Singh died as a result of the accident, and hence the claim was not maintainable. Further, it was submitted that the policy of insurance had already been cancelled since the cheque issued towards premium was dishonoured, and in view of Section 64VB of the Insurance Act, no risk was covered on the date of accident. It was also argued that the learned Tribunal wrongly assessed the income of the deceased at ₹2100/- per month merely on oral evidence, whereas the employer himself admitted his salary to be ₹1000/- plus ₹200/- diet allowance, thereby inflating the compensation.

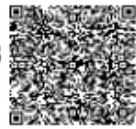


5. *Per Contra*, Learned counsel for the respondents supported the award and submitted that the learned Tribunal has rightly appreciated the evidence and assessed just compensation. It was argued that the findings are well-founded and do not call for any interference in appeal.

OBSERVATIONS AND FINDINGS

6. Having heard learned counsel for the parties and examined the record, this Court finds no ground to interfere with the well-reasoned award of the learned Tribunal.

7. The learned Tribunal, after a careful appreciation of the evidence, concluded that negligence on the part of the driver was not established and that the accident had occurred when the bus struck against a *kikkar* tree due to a mechanical defect in the vehicle. In the present case, the deceased was employed as a bus conductor, and the accident had arisen directly out of the use of the vehicle during the course of his employment. Under the Motor Vehicles Act, 1988, the liability to pay compensation arises once it is established that the death or injury occurred “arising out of the use of a motor vehicle.” In *Kaushnuma Begum v. New India Assurance Co. Ltd., 2001 (2) SCC 9*, the Hon’ble Supreme Court held that even in the absence of negligence, the owner of the vehicle remains liable to compensate the victim, and such liability cannot be avoided merely because the accident did not result from any negligent act of the driver. The Court, while referring to the principle laid down in *Rylands v. Fletcher*, observed that when a motor vehicle, which is inherently a source of potential danger, causes injury or death during its use, the owner cannot escape liability unless the accident is proved to have been caused by a *vis major* or an act of God. The Apex Court further clarified that the concept of “no-fault liability” under Section 140 of the Act is distinct from the rule of strict liability,

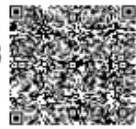


and that compensation may still be awarded even apart from Section 140, when the accident arises out of the use of a motor vehicle. It was held that compensation payable under Section 163A being a special provision introduced by way of social welfare legislation does not depend on proof of negligence and provides a structured formula for determining just compensation. The Hon'ble Supreme Court in ***Kaushnuma Begum (Supra)***, speaking through Justice K.T. Thomas, observed as follows:

"11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

*12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident ? This question depends upon how far the Rule in ***Rylands v. Fletcher*** (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus :*

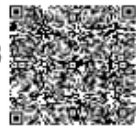
"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the petitioner's default, or, perhaps, that the escape was the consequence of vis major, or the Act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."



18. *In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another, 1987(3) SCC 234, the question considered was regarding the application of the Rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here :*

"Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in the road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles as a liability without fault."

19. *Like any other common law principle, which is acceptable to our jurisdiction, the Rule in Rylands v. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to*

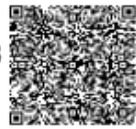


adopt the Rule in claims for compensation made in respect of motor accidents.”

20. "No Fault Liability" envisaged in Section 140 of the Motor Vehicles Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the Motor Vehicles Act permit that compensation paid under 'no fault liability' can be deducted (thereof?) from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore of the opinion that even apart from Section 140 of the Motor Vehicles Act a victim in an accident which occurred while using a motor vehicles, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

21. Now, we have to decide as to the quantum of compensation payable to the appellants. We first thought that the matter can be remitted to the Tribunal for fixation of the quantum of compensation but we are mindful of the fact that this is a case in which the accident happened more than 13 years ago. Hence we are inclined to fix the quantum of compensation here itself.

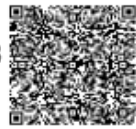
22. Appellants claimed a sum of Rs. 2,36,000/-. But PW-1 widow of the deceased said that her husband's income was Rs. 1,500/- per month. PW-4 brother of the deceased also supported the same version. No contra evidence has been adduced in regard to that aspect. It is, therefore, reasonable to believe that the monthly income of the deceased was Rs. 1,500/-. In calculating the amount of



compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the Motor Vehicles Act. Though it was formulated for the purpose of Section 163A of the Motor Vehicles Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned.”

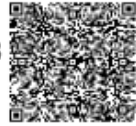
In light of the ratio laid down in ***Kaushnuma Begum (supra)*** and the subsequent adoption of the principle under Section 163A of the Motor Vehicles Act, it is clear that even where negligence is not established, the claimant or the legal heirs of the deceased are entitled to compensation if the accident has arisen out of the use of a motor vehicle. Accordingly, although the learned Tribunal found that the accident occurred due to a mechanical defect and not on account of rash or negligent driving, the liability of the owner and the insurer subsists under Section 163A of the Act. Therefore, the claimants are entitled to receive just and reasonable compensation under the said provision.

8. Furthermore, the Sarup Singh (RW1)-owner of the vehicle himself admitted the occurrence of the accident and lodged the DDR (Ex.A1) to that effect, which, when read conjointly with the testimony of the widow (AW1), clearly establishes that the deceased Dilbagh Singh lost his life in the said occurrence. Thus, the mere technical lapse of non-conduct of postmortem cannot be permitted to nullify such credible and convincing evidence. Consequently, The award, determined in this manner, aligns with the social-welfare object of the Act and ensures that the claimants are not left without recourse. There is no infirmity in the learned Tribunal’s finding of liability, and learned Tribunal rightly applied structured formula provided in Schedule II of the Act to compute the loss of dependency, which prescribes the methodology



for assessing compensation based on the deceased's age, income, and number of dependents, ensuring that the family of the deceased is justly compensated even in cases where the accident was not caused by rash or negligent driving.

9. Moreover, the contention raised by the insurer that the policy stood cancelled due to the dishonour of the premium cheque has been rightly rejected by the learned Tribunal. Once an insurance policy or cover note is issued, it continues to remain valid and enforceable against third parties, irrespective of any disputes between the insurer and the insured. The Hon'ble Supreme Court, in *Oriental Insurance Co. Ltd. v. Inderjit Kaur, 1998 (1) SCC 371*, and *New India Assurance Co. Ltd. v. Rula, 2000 (3) SCC 195*, has unequivocally held that an insurer cannot avoid liability towards third parties merely on the ground of dishonour of the premium cheque. The statutory liability of the insurer under Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988, is absolute and continues to operate notwithstanding any inter se dispute between the insurer and the insured. These provisions impose a statutory obligation on the insurer to satisfy claims of third-party victims arising out of the use of the insured vehicle, and such liability cannot be curtailed or avoided on the ground of internal disagreements, including non-payment or dishonour of premium by the insured. In spite of this, the learned Tribunal has examined a copy of the insurance policy (Ex. R1), which clearly establishes that the vehicle was insured at the time of the accident. Accordingly, the liability to pay the compensation rests with the insurance company. This underscores the principle that the law prioritizes the protection of third-party victims over any contractual disputes between the insurer and the insured.



10. As regards the quantum of compensation, the learned Tribunal rightly assessed the monthly income of the deceased at ₹2,100/- in the absence of any proof on the part of respondents with respect to less income and applied a multiplier of 15, keeping in view his age of 27 years, thereby determining the total compensation at ₹2,70,000/-. However, in accordance with Schedule II of the Motor Vehicles Act, 1988, the appropriate multiplier for a person aged 27 years is 18. Applying this multiplier after deducting one-third of the annual income for personal expenses, the net annual contribution of the deceased works out to ₹16,800, and the resulting compensation for loss of dependency amounts to ₹3,02,400/-. Accordingly, the compensation awarded by the learned Tribunal requires enhancement, and in the facts and circumstances of the case, an amount of ₹3,02,400/- is just and reasonable.

11. Accordingly, the present appeal stands **dismissed**. However, taking into account the proper application of Schedule II of the Motor Vehicles Act, 1988, the compensation awarded by the learned Tribunal is enhanced to ₹3,02,400/- for loss of dependency, as compensation under welfare legislation can be increased on appeal even if the claimants themselves have not filed an appeal. In all other respects, the impugned award remains confirmed.

12. Since the main appeal stands decided, any pending application(s), if any, also stand disposed of.

(VIRINDER AGGARWAL)
Judge

13.10.2025

Saurab Pathania

Whether speaking/non-speaking : Yes
Whether reportable : Yes