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**(1984) 09 P&H CK 0084**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal Order No. 682 of 1980 Cross Objection No.91.CII of 1984

Gurcharan Singh and another

APPELLANT

Vs

Savitri devi and others

RESPONDENT

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**Date of Decision :** 20-09-1984

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 96

**Citation :** (1984) 09 P&H CK 0084

**Hon'ble Judges :** S.S. Sodhi, J

**Bench :** Single Bench

**Advocate :** Harbans Singh, with Mr. M.P. Gupta, for the Appellant; Amarjit Markan with Mr. Arihant Jain, for the Respondent No. 1, 3 and 4 and Mr. V.P. Gandhi, for the Respondent No. 5, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.S. Sodhi, J.—The controversy in appeal here is with regard to the liability of the Insurance Company

2. Sadhu Ram was killed while travelling in taxi PNY 1045 when it went and hit into an electric pole. This happened at about midnight on the night intervening April 4 and 5, 1977, on the Rajpura-Patiala road.

3. It was the finding of the Tribunal that the accident had been caused by the rash and negligent driving of the taxi-driver. A sum of Rs. 31,000/-was awarded as compensation to the claimants, they being the mother, widow and children of Sadhu Ram deceased. Liability for the amount awarded was confied to the driver and the owner of the car as the Tribunal found that when the accident occurred, there was no permit to use this car as a taxi.

4. It must indeed be held that the Tribunal rightly absolved the Insurance Company for the liability. According to terms of the policy of insurance, there was a limitation prescribed in the Schedule thereof on the use of the car, namely "Use only under a Contract Carriage/State Carriage permit within the meaning of the

Motor Vehicles Act, 1939." Admittedly, there was no such permit when the accident occurred. This Schedule also contains the notice "The insured is not indemnified if the vehicle is used or driven otherwise than in accordance with this Schedule." This also constitutes one of the defences open to the Insurance Company u/s 96 of the Motor Vehicles Act, namely, section 96(2)(b) (1)(a), which reads as under :--

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

5. There is clearly no merit in the contention sought to be raised by Mr. Harbans Singh, counsel for the taxi driver, that as the use of the taxi without permit was not specifically excluded as per the terms of the schedule to the Insurance Policy Exhibit R.6, the Insurance Company must be deemed to be liable. The reference here was to the provision in the policy of insurance that it did not cover: (1) Use for organised racing pace-making reliability trial or speed testing, or (2) use whilst drawing a trailer except the towing (other than reward) of any one disabled mechanically propelled vehicle. The point sought to be canvassed being that the policy of insurance was an all-embracing one covering all risks except those falling within these two exceptions. This is clearly an unwarranted construction on the terms of the policy of insurance. As pointed out earlier, it was specifically provided in this policy that the insured would not be indemnified if the vehicle was used or driven otherwise than in accordance with the schedule and the schedule here contained the specific limitation on the use of a taxi as such without the requisite permit. The Tribunal thus rightly held the Insurance Company not liable for the payment of any compensation in this case.

6. The other question which arises in this appeal is with regard to the quantum to compensation payable to the claimants. The evidence on record shows that Sadhu Ram deceased was employed as Junior Analyst in the Food and Supplies Department at Sangrur. His total emoluments were Rs. 438 per month. He died leaving behind his mother, young widow Savitri Devi who was only 22 years of age and two minor children a daughter aged 4 and a son who was only two years old. All the claimants were dependent upon the deceased. Applying here the principles as laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur (1979) 81 P.L.R. 1, 16 must obviously be taken to be the appropriate multiplier. The dependency deserves to be fixed at Rs. 3000 per annum. So computed, the compensation payable would work out to Rs 48,000, which may be rounded off to Rs. 50,000.

7. The compensation payable to the claimants is accordingly hereby enhanced to Rs. 50,000, which the claimants shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of payment of the amount awarded. Out of the amount awarded, a sum of Rs. 10,000 each shall be payable to the mother and son of the deceased and the

balance to his widow. The amount payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

8. In the result, the cross-objections filed by the claimants are hereby accepted while the appeal is dismissed with costs. Counsel's fee Rs. 300.