

(2008) 09 J&K CK 0010
In the Jammu And Kashmir High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Zainab and Others		RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Citation : (2009) ACJ 2495

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—The core question involved in this appeal is whether accident was the outcome of contributory negligence or

outcome of negligence of driver, respondent No. 3? The adequacy of compensation is also questioned.

2. The claimants filed a claim petition claiming compensation on the ground that Mohammad Shafi Chachi, aged 36 years was travelling as a

labourer in a goods vehicle on 13.5.2004 who sustained head injury and succumbed to the injuries due to rash and negligent driving by the

respondent No. 3. The deceased was earning Rs. 15,000 per month. Claimants claimed compensation to the tune of Rs. 20,00,000. Driver and

owner were set ex parte. Insurer appellant contested the claim petition and following issues came to be framed:

(1) Whether the deceased Mohammad Shafi Chachi aged 36 years died in an accident involving vehicle No. DL 1G-B 4182 when the said vehicle

met with an accident on 13.5.2004 on Jammu-Srinagar National Highway near Jawahar Tunnel. Deceased was travelling in the said vehicle as

labourer for transporting sheep from Delhi to Srinagar? OPP

(2) In proof of issue No. 1 whether the petitioners here are legal representatives of the deceased and, if so, whether they are entitled to any

compensation under the provisions of Motor Vehicles Act, if so, how much compensation is to be given to them and by whom? OPP

(3) Whether the insurance company is not bound to compensate the owner and driver, if so, how and why? OPR 3

(4) Relief.

3. All the witnesses examined by the claimants have deposed that deceased was travelling in the offending vehicle as a labourer and driver has

driven the vehicle rashly and negligently at Jammu-Srinagar National Highway near Jawahar Tunnel. The deceased sustained injuries and

succumbed to the injuries. Thus, issue No. 1 came to be rightly decided by the Tribunal.

4. Insurer appellant examined only one witness, namely, Imtiyaz Ahmad Shah, who has nowhere stated that owner has committed any breach. It is

worthwhile to mention herein that learned Counsel for the appellant has also not argued that insured has committed any breach. But he contested

the claim petition on contributory negligence and adequacy of compensation. Thus, appellant insurer has failed to prove issue No. 3. Accordingly,

the issue No. 3 is decided in favour of the claimants against the appellant insurer.

5. Learned Counsel for the appellant, however, argued that deceased labourer was sitting on tool box of the truck, thus he too was negligent and

thus accident was outcome of contributory negligence.

6. The question is whether it is negligence of the driver of the offending vehicle or of the deceased labourer? It is the driver who has to drive the

vehicle; it is he who has to take all precautions. It was the duty of the driver not to allow the labourer to sit on tool box. It cannot be said that it

was mistake or negligence of labourer. He was not an expert; expert is driver. If a passenger sits on roof of the bus, it is the duty of the driver not

to allow the passengers to sit on roof and if the accident occurs that would be negligence of the driver.

7. The party who presses into service contributory negligence, has to plead and prove the same. There is not an iota of evidence led by the insurer

to that effect. Punjab and Haryana High Court has also held in a case titled Vijay Singh Vs. Haryana Roadways and another, , that travelling on

roof of bus does not per se constitute contributory negligence. It is apt to reproduce paras 6 and 7 of the said judgment herein:

(6) There is a duty of care that rests upon the driver of a bus towards all persons travelling on it which covers not only those in it, but extends also

to passengers travelling on the roof of it, even though it may not have been permissible in law for them to be there. Breach of any rule or instruction

prohibiting travel on the roof of a bus cannot be construed as a licence to the bus driver to drive the bus without due regard to the care and safety

of all passengers including those on the rooftop. Rather, when there are passengers on the roof, extra caution is imperative. These observations

are, of course, not to be taken as approving or permitting travel on the roof of a bus. It is clearly incumbent upon the authorities concerned to

ensure that travel on the roof of a bus is not only banned, but does not in fact take place as a risk of serious injury is so obviously inherent in such

travel.

(7) Seen in this light, no contributory negligence can be fastened upon a passenger travelling on the roof of the bus and who sustains injuries on

account of the negligent driving of the bus driver, merely on the ground that he had been travelling on the roof of the bus and not inside it. In this

view of the matter, the finding of contributory negligence recorded against the claimant cannot be sustained and is thus set aside.

8. The same view has again been taken by the High Court of Punjab and Haryana in a case titled *Manjit Kaur and Others Vs. Pepsu Road Trans.*

Corpn. and Others, .

9. This Court has also taken the same view in case titled *Deeraj Singh Vs. Mst. Hajra and Others, .*

10. Thus, argument of learned Counsel for the appellant is devoid of any force and it is hereby held that accident was outcome of rashness and

negligence of the driver.

11. Tribunal has taken income of the deceased as Rs. 4,500 while treating him as labourer. Admittedly, he was a labourer. He would not have

been earning less than Rs. 4,500 per month. Tribunal has rightly deducted Rs. 1,500 for his personal expenses and held that claimants have lost

source of dependency to the tune of Rs. 3,000 per month. The age of the deceased as pleaded and proved is 36 years. The multiplier 16 came to

be rightly applied while keeping in view the Schedule appended to the Motor Vehicles Act, Rs. 5,000 as loss of consortium, Rs. 2,500 for loss to

the estate and Rs. 2,500 for funeral expenses came to be rightly awarded. The rate of interest also came to be rightly awarded.

12. In the given circumstances, the finding returned on issue Nos. 2 and 3 are upheld.

13. In view of the above discussion, the appeal is dismissed and impugned award/judgment is upheld.

14. Registry to send down the record along with a copy of this judgment.