

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

(i) FAO-338-1998 (O&M)

Jas Ram

...Appellant

VERSUS

Smt.Sakeena and others

...Respondents

(ii) FAO-417-1998 (O&M)

United India Insurance Company

...Appellant

VERSUS

Smt.Sakeena and others

...Respondents

(iii) FAO-981-1998 (O&M)

Smt.Sakeena and others

...Appellants

VERSUS

Jas Ram and others

...Respondents

Date of Decision: April 24, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajesh Lamba, Mr.Deepak Nagar and
Mr.Anuj Sehrawat, Advocates
for the appellant (in FAO-338-1998)
for respondent No.5 (in FAO-417-1998) and
for respondent No.1 (in FAO-981-1998).

Mr.Vinod Chaudhari, Advocate
for the appellant (in FAO-417-1998)
for respondent No.7 (in FAO-338-1998) and
for respondent No.3 (in FAO-981-1998).

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Mr.Rohit Rana, Advocate for
Mr.Kunal Dawar, Advocate
for the appellants (in FAO-981-1998),
for respondents No.1 to 4 (in FAO-338-1998) and
for respondents No.1 to 4 (in FAO-417-1998).

ARCHANA PURI, J.

These are three appeals, filed by Jas Ram, driver-cum-owner of the offending vehicle, United India Insurance Company-insurer of the offending vehicle and claimants, to assail the Award dated 10.11.1997 passed by learned Motor Accident Claims Tribunal, vide which, compensation was awarded, on account of death of Ibrahim, in a motor vehicular accident.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 03.03.1995, at about 6.00 a.m., Ibrahim (since deceased) along with various other companions, in canter bearing registration No.HR-29B-9207, was proceeding to the village, while carrying dead body of Bilkish, in the said canter. Enroute, at bye-pass road Hodal, an accident had taken place between the canter in question as well as stationary tractor bearing registration No.USO-3311, as a result whereof, Ibrahim had sustained injuries and subsequently, he succumbed to said injuries. It is categorical claim of the claimants that accident had taken place, due to rash and negligent driving of canter bearing registration No.HR-29B-9207, driven by Jas Ram.

FIR No.41 dated 03.03.1995 under Sections 279, 337, 304-A IPC was

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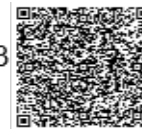
got registered, at the instance of Subhan.

The widow, two children and mother of deceased Ibrahim had filed the claim petition for seeking compensation, on account of death of Ibrahim, in the accident in question.

Upon notice, respondents made appearance and filed respective replies. Respondent No.1-Jas Ram, in the reply, had raised various preliminary objections to dispute the cause of action, locus standi, as well as, asserted about the claim petition to be bad for non-joinder of necessary parties and that he was holding a valid driving licence and the canter was insured with respondent No.4-United India Insurance Company Limited, under policy cover note, valid upto 04.01.1996.

On merits, he controverted the averments of the claim petition. In fact, a plea was taken that respondent No.1, did not struck the canter against the stationary tractor, in a rash and negligent manner. However, he did not deny the accident in toto, nor he denied about himself to be the driver of the offending vehicle, at the relevant time.

Respondents No.2 and 3, in their separate reply, also raised preliminary objections to dispute the cause of action as well as to assert about the claim petition to be bad for non-joinder of necessary parties and also disputed the maintainability of the petition. However, the accident, as such, was admitted, but they asserted that the tractor-trolley was not owned by them. Rather, the same was owned by Puran and Todi, sons of Nathi Lal. They had further averred that the tractor-trolley had broken down, on the way and respondent No.1, while driving the canter, rashly and negligently, struck the tractor-trolley from behind. As such, the accident had taken place,

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due to gross negligence of respondent No.1 (Jas Ram).

Respondent No.4-insurance company, in its reply, had also asserted about respondent No.1 to be not holding proper and effective driving licence and further also asserted to have insured the vehicle of respondent No.1, while issuing commercial vehicle 'B' policy and the vehicle was not meant for carrying passengers on hire or reward. Since, the deceased was travelling in the vehicle as gratuitous passenger or for hire or reward, therefore, it was not liable to pay any compensation. However, it was admitted that the aforesaid canter was insured with the insurance company from 05.01.1995 to 04.01.1996.

From the pleadings of the parties, following issues were framed:-

1. *Whether death of deceased Ibrahim was caused in motor accident which took place on 3.3.95 at 6 AM on Bye-pass Hodal due to rash or negligent driving of canter No.HR-29B-9207 by respondent No.1 as alleged?OPP*
2. *Whether the petitioner(s) are L.Rs-dependents of deceased?OPP*
3. *To what amount of compensation, if any, the petitioners are entitled to and from whom?OPP*
4. *Whether the petition is bad for non-joinder and misjoinder of parties?OPR*
5. *Whether the deceased was a gratuitous passenger if so, its effect?OPR*
6. *Relief.*

To substantiate their claim, claimant-Sakeena, widow of Ibrahim, had stepped into witness box as PW-2 and further also examined PW-1 Haroon and PW-3 Subhan. The post-mortem report was proved as

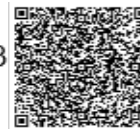
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Ex.PX, photocopy of ration card Mark 'A' and 'B' were also tendered into evidence.

Respondent No.1-Jas Ram, tendered into evidence, copy of driving licence Mark 'A' and closed the evidence. Respondent No.4 tendered into evidence, the copy of the insurance policy Ex.R1 and closed the evidence. However, respondents No.2 and 3 had subsequently not pursued the claim petition and as such, were proceeded against ex-parte.

On appraisal of the evidence brought on record, learned Tribunal, had concluded about the accident to have taken place, due to rash and negligent driving of canter bearing registration No.HR-29B-9207, driven by respondent No.1-Jas Ram and the same resulted into inflicting of injuries on the person of Ibrahim, which proved fatal. Ultimately, while considering the deceased as labourer, his earnings were assessed as Rs.800-Rs.900/- per month. 1/3rd was deducted as personal expenses and the loss of dependency was assessed as Rs.600/- per month, annual whereof is Rs.7200/-. Considering the age of the widow, two minor children and old mother, multiplier of '20' was applied and the compensation was worked upon as Rs.1,44,000/-.

Even, qua the liability of the respondents to pay the compensation assessed aforesaid, it was concluded by learned Tribunal that canter in question was insured as commercial vehicle under 'B' policy. According to clause 1(f) of the said policy, the company is not liable to pay, in respect of death and/or bodily injury to any person, who is not employee of the insurer and not being carried for hire or reward, other than owner of the goods or representative of the owner of the goods. In view of the cross-examination of

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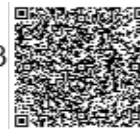
PW-3 Subhan, it concluded about deceased Ibrahim to be not employee of insurer and that he was carried in the canter, either on hire or as gratuitous passenger. Consequently, the claim petition was allowed against respondent No.1-Jas Ram (driver-cum-owner of the offending vehicle) and respondent No.4-insurer of the offending vehicle and compensation of Rs.1,44,000/- was awarded, together with the interest @ 12% per annum, from the date of institution of the petition, till realization. However, the liability of respondent No.4-insurance company, was limited only to the extent of Rs.50,000/- and the balance amount was ordered to be paid by respondent No.1 i.e. Jas Ram. However, the claim petition qua respondents No.2 and 3 was dismissed.

Being aggrieved, claimants Sakeena and others, filed **FAO-981-1998**, to assail the adequacy of the compensation granted by learned Tribunal. **FAO-338-1998** has been filed by Jas Ram, driver-cum-owner of the offending vehicle, to assail the manner of accident, as concluded by learned Tribunal and also about the limited liability, having fastened upon the insurance company.

FAO-417-1998 has been filed by the United India Insurance Company, thereby, seeking complete exoneration from the liability to pay the compensation, as worked upon by learned Tribunal.

Learned counsel for the parties heard.

So far as, the factum and manner of accident is concerned, it is not disputed between the parties that at the relevant time, the dead body of Bilkish was being carried in the offending canter and Ibrahim (since deceased) together with other persons, was also accompanying the dead

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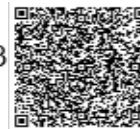
body, at the relevant time. PW-3 Subhan had categorically deposed about carriage of dead body, in the offending vehicle, at the relevant time. He also deposed that besides himself, PW-1 Haroon, Ibrahim (since deceased), Jumma, Saddiq, Amru, Kalu and others were accompanying the dead body. He also categorically stated about driver of the canter, respondent No.1-Jas Ram, to be driving the canter in a rash and negligent manner and while so driving, he struck the canter, into the stationary tractor, which was standing on its right side of the road, on katcha portion. Due to the impact, Ibrahim had suffered serious injuries and died instantaneously. He also deposed about recording of the FIR, at his instance, copy whereof is Ex.PW3/A.

Even, PW-1 Haroon, who was accompanying the dead body, at the relevant time, has deposed in consonance with the pleaded version, about the rashness and negligence, on the part of driver of the canter and the manner of injuries sustained by Ibrahim, which proved fatal.

Also, PW-2 Sakeena, widow of deceased has deposed about death of her husband Ibrahim. Post-mortem report has been proved as Ex.PX.

However, it is pertinent to mention that Jas Ram, upon whom, there is imputation of rashness and negligence, had no cheeks to step into witness box, to dispute about the factum and manner of taking place of the accident. He had not stepped into witness box to explain away or to question the manner of accident, as pleaded by the claimants.

Thus, in the light of the same, the findings of learned Tribunal, qua the factum of accident, being outcome of rashness and negligence driving of the canter, at the instance of respondent No.1-Jas Ram, are hereby

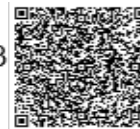
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affirmed.

The fact of death of Ibrahim, as such, stand established from the evidence adduced. However, the 'work on' of the compensation, as detailed in the earlier portion of the judgment, do call for re-computation, as per prevalent law.

It is the categorical claim of the claimants that deceased Ibrahim was working as mason and labourer contractor and was earning Rs.4000/- per month. However, learned Tribunal singularly picked up cross-examination of PW-3 Subhan, who stated that Ibrahim was working as labourer and earning Rs.50/- per day. However, it is pertinent to mention that Sakeena, widow of deceased, who was a material witness, to depose about the vocation followed by the deceased, stepped into witness box as PW-2 and she has categorically stated that her husband was self-employed as mason and was earning Rs.2000/- per month. However, there is no reason assigned by learned Tribunal to discard the testimony of Sakeena qua vocation of her husband, more particularly, when a suggestion had been given that her husband was not working as mason and he never used to earn Rs.2000/- per month and this suggestion was categorically denied.

It is true that no documentary evidence was brought on record, to substantiate the source of earning of deceased Ibrahim, but however, it is very difficult to produce document to prove the income of a victim, after his death, especially, when he is indulging in the labour work or masonry or weaving or other unskilled/semi-skilled works. However, at the same time, it has to be taken into consideration that oral evidence, as such, cannot be thrown out, in the absence of rebuttal and/or any contra evidence, transpires



from the side of the respondents.

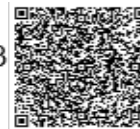
Considering the testimony of Sakeena, as a whole, it thus, stands established that deceased was working as mason. However, no extent of his earnings, as such, stands established, but anyhow, the indulgence of deceased in masonry work, as pleaded and as deposed by the widow, as such, cannot be over-looked. Taking it to be so, while making some guess work, vis-a-vis, the earnings of Ibrahim, as assessed for labour work by learned Tribunal and making a modest estimate, close to the proximate reality, the earnings of the deceased can safely be accepted as Rs.1200/- per month.

Considering the number of dependents i.e. widow, two children and aged mother, who are claimants, deduction on the count of 'personal expenses' ought to be made to the extent of 1/4th, instead of 1/3rd as done by learned Tribunal. However, the multiplier applied by learned Tribunal is on higher side. As per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '16'.

Besides the aforesaid, on the count of '**loss of consortium**', all the appellants-claimants, are entitled to prevalent amount of Rs.48,400/- each i.e. $Rs.48,400 \times 4 = Rs.1,93,600/-$ and they are also entitled to compensation, on the counts of '**loss of estate**' as well as '**funeral expenses**', which is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Ibrahim, is re-computed, as herein given:-

Income of deceased	Rs.1200/- per month
Deduction of 1/4th as personal expenses	Rs.300/-



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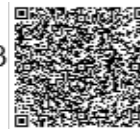
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Loss of dependency	Rs.1200-300=Rs.900/- per month
Addition of 40% as future prospects	Rs.900+Rs.360=Rs.1260/- annual comes to be Rs.15,120/-
Multiplier of '16'	Rs.15120x16= Rs.2,41,920/-
Loss of consortium	Rs.1,93,600/-
Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	Rs.4,71,820/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.4,71,820-1,44,000=Rs.3,27,820/-**. On the enhanced amount of the compensation i.e. **Rs.3,27,820/-**, the appellants-claimants shall be entitled to the interest, at the rate of 8% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Out of the total compensation i.e. **Rs.4,71,820/-**, as worked upon aforesaid, appellant-claimant No.1 is held entitled to **Rs.1,71,820/-**, whereas, appellants-claimants No.2 to 4 are held entitled to **Rs.1,00,000/-** each. However, the compensation, if any, disbursed to the appellants-claimants, at any earlier stage, shall be adjusted accordingly.

Now, arises the question of 'liability' to pay the compensation. Learned Tribunal, while considering the claim put forth by the insurance company, had concluded about the deceased to be occupant of the offending vehicle, either on hire or reward or gratuitous passenger and therefore, the liability was mainly fastened upon Jas Ram-respondent No.1 and the liability of the insurance company was limited only to Rs.50,000/-. However, learned counsel for Jas Ram, driver-cum-owner, has categorically submitted that learned Tribunal had erroneously reached the conclusion about the victim to be occupant, either on hire or reward or as gratuitous

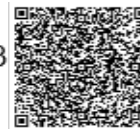
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passengers and as such, the insurance company was not liable to pay the compensation. It is submitted that learned Tribunal, ought to have directed the insurance company to pay the compensation, as it failed to prove about the deceased to be gratuitous passenger. In fact, deceased Ibrahim was accompanying the dead body, which for the purposes of adjudication of the liability, ought to be taken as 'cargo' and therefore, the deceased accompanying the dead body, as such, could not be concluded to be gratuitous passenger or to be occupant on hire basis.

On the other hand, learned counsel appearing on behalf of the insurance company, vehemently opposed the prayer of learned counsel for Jas Ram and he submitted that Award under challenge, passed by learned Tribunal is correct and legal, so far as the manner of presence of deceased Ibrahim, in the canter in question, at the relevant time, is concerned. He submits that learned Tribunal has correctly come to the conclusion that deceased to be gratuitous passenger or hire basis, in the goods carriage, at the time of carrying the dead body. In fact, he submits that the offending vehicle was used other than the purposes, for which it was permitted, as it was transporting a dead body. Therefore, he submits that there ought to be complete exoneration of the insurance company to pay the compensation.

Undisputedly, the dead body was carried in the offending vehicle, at the relevant time of accident. In this regard, beneficial reference is made to decision rendered by Hon'ble Calcutta High Court in '***China Das & Others vs. The New India Assurance Company Limited & Anther, 2025(1) TAC 392***', wherein, it was observed, as herein given:-

"17. It is a categorical statement of the claimants that the deceased had travelled in a goods vehicle for loading and

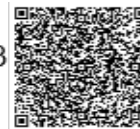


unloading of a dead body and after unloading such dead body, when the deceased was returning back, the accident took place.

18. Exh. R2 is a Goods Carriage Permit produced by the owner according to which the nature of goods that could be carried are 'all types of goods except prohibited'. Section 2 (13) of the Motor Vehicles Act, 1988 defines the term 'goods' as: "Goods includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried in a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of a passenger travelling in the vehicle". Therefore, living person is not a 'goods' but a dead person if transported becomes a 'cargo'. There is also no prohibition to transport a dead body in a goods vehicle. There is no law that a dead body should always be carried in an ambulance or a mortuary van.

19. Therefore, carrying a dead body in a goods vehicle is also covered within the meaning of a goods vehicle used in carriage of goods and the deceased was a coolie/loadman, for whom there was premium paid for the coverage and, therefore, the insurance company is liable to indemnify the insured."

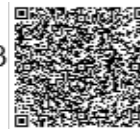
Further, reliance is placed upon decision rendered by the Hon'ble Madras High Court in '***The Divisional Manager, M/s. United India Insurance Co. Ltd. vs. Dhamayanthi and others, 2012(14) RCR (Civil) 9***', wherein, it was observed that dead person, if transported in a goods vehicle, becomes 'cargo' and there is also no prohibition to transport the dead body in goods vehicle. Thus, carrying a dead body in a goods vehicle, is also covered within the meaning of goods vehicle used in carriage of goods. The liability, as such, was fastened as premium was paid for 'non-fare paying passenger'.



In the case in hand also, a dead body was carried, in the offending vehicle, at the relevant time. Now, the question arises that deceased Ibrahim, who was accompanying the dead body, besides various other persons, could be concluded to be gratuitous passenger or on hire basis. However, it is pertinent to mention that at the relevant time, the vehicle in question was carrying a dead body and thus, it can be believed that deceased was member of the cremation/burial party and he along with other, was present in the vehicle for loading and unloading of the dead body, for the purposes of cremation/burial.

Ex.R3 is the copy of the policy, which is 'B' policy i.e. comprehensive policy. Before considering the same, it is also pertinent to make reference to definition of the term 'goods'. Section 2 (13) of the *ibid* Act, defines 'goods' as includes livestock and anything (other than equipment ordinarily used with the vehicle) carried in a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of a passenger travelling in the vehicle. Therefore, considering the definition, the living person, as such, is not a 'goods', but if a dead person, is transported, becomes a '**cargo**'. There is also no prohibition to transport a dead body in a goods vehicle. As held in *Dhamayanthi's case (supra)*, there is no law that a dead body should always be carry in an ambulance or mortuary van.

Considering the aforesaid, therefore, carrying a dead body in goods vehicle, is also covered, within the meaning of a 'goods' vehicle, used in carriage of goods. That being so, the nature of the deceased accompanying the dead body to facilitate loading/unloading of the same, for

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the purposes of cremation/burial, can be considered as 'non-fare paying passenger'.

In the given circumstances, it was incumbent upon the insurance company to establish as to whether the insurance policy, so issued, reflects about any contract between the insurer and insured of having wide indemnity cover and the nature of the same. However, perusal of Ex.R2 reveals that in the schedule of premium, besides the base premium, there is mention made of the additional premium on various other counts, but however, the detailed break-up of the same, as such, has not been mentioned, nor any evidence, in this regard, has been led by the insurance company.

Even though, much emphasis has been laid upon the cross-examination of PW-3 Subhan, wherein, he had stated about Rs.1000/- agreed to be paid, but however, suffice to consider that any transport vehicle, used solely for the conveyance of corpses and mourners, accompanying the corpses, cannot be taken to be indulgence in the commercial activity, more particularly, when PW-3 Subhan makes a mention about tanker having hired, which is not the vehicle in question and more particularly, when the number of the same, as such, is not coming forth.

In the absence of the same, *ipso facto*, it cannot be concluded that the person accompanying the dead body, which is now taken as 'cargo', was not covered under the insurance policy and therefore, the insurance company was to be exonerated from any kind of liability to pay the compensation. In fact, the insurance company has failed to discharge the onus in this regard. In the light of the same, once there exist the valid insurance policy,

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considering the same, when the insurance company, as such, has failed to discharge its onus to prove about the deceased to be occupant of the offending vehicle as gratuitous passenger or on hire basis, the exoneration of the insurance company, as such, cannot be so concluded.

In light of the aforesaid observations, the liability to pay the compensation worked upon aforesaid, is fastened upon respondent No.1-Jas Ram, in the capacity of being driver-cum-owner of the offending vehicle as well as respondent No.4-United India Insurance Company, being insurer of the offending vehicle in question, jointly and severally.

Accordingly, the impugned Award dated 10.11.1997, stands modified, to the extent, as indicated aforesaid.

With the above observations, **FAO-338-1998 and FAO-981-1998** stand allowed, whereas, **FAO-417-1998** stands dismissed.

April 24, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No