IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3907 of 2017 (O&M)

THE NEW INDIA ASSURANCE CO. LTD. …Appellant
Vs
VEERPAL KAUR AND ORS. …Respondents

1	The date when the judgment was reserved	05.02.2026
2	The date when the judgment is pronounced	06.03.2026
3	The date when the judgment is uploaded on the website	06.03.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Abhimanyu Kalsy, Advocate
for the appellant.

Mr. Deepanshu Sharma, Advocate for
Mr. H.S. Jalal, Advocate for the respondents.

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HARKESH MANUJA, J.

1. The present appeal has been preferred by the appellant-Insurance Company assailing the award dated 17.02.2017 passed by the learned Motor Accident Claims Tribunal, Bathinda (for short, "the Tribunal"), whereby compensation to the tune of Rs.21,72,000/- along with interest @ 7% per annum from the date of filing of the claim petition till realization has been awarded to respondent Nos.1 to 4 on account of death of Pritpal Singh in a motor vehicular accident.

FACTS

2. The claimants, being the legal representatives of deceased Pritpal Singh, filed a petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was working as a helper-cum-second driver on Truck No. PB-03X-9158. On 25.05.2016, while proceeding from Rampura to Pathankot, the vehicle,

being driven by respondent No.5-Megh Raj in a rash and negligent manner, went out of control near Bughipura Chowk and struck against the wall of a house. The deceased suffered multiple injuries and later succumbed to the same.

3. The learned Tribunal, on appreciation of the evidence, held that the accident occurred due to rash and negligent driving of the offending vehicle and awarded compensation as noticed above, fastening joint and several liability upon the driver, owner and the insurer.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE APPELLANT/INSURANCE COMPANY

4. Learned counsel for the appellant/Insurance Company assailed the impugned award primarily on the grounds that the deceased, who was travelling in the offending vehicle in the capacity of a helper/second driver, does not fall within the ambit of the expression "any person" as contemplated under Section 147 of the Act, and therefore, the liability could not have been fastened upon the insurer. It was further contended that as per DDR lodged by the father of the deceased, the accident in question occurred while the driver was attempting to save stray cattle and, thus, the essential ingredient of rash and negligent driving was completely absent. Learned counsel also argued that the learned Tribunal erred in law in awarding future prospects while assessing the loss of dependency. Lastly, it was submitted that there was a fundamental breach of the terms and conditions of the insurance policy and, consequently, the appellant/Insurance Company was not liable to indemnify the insured.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENTS NO. 1 TO 4/CLAIMANTS.

5. Learned counsel appearing on behalf of respondent Nos.1 to 4–claimants supported the award passed by the learned Tribunal and submitted that the same was based upon a correct and proper appreciation of the oral as well as

documentary evidence available on record and did not call for any interference by this Court. It was contended that the deceased was admittedly travelling in the offending vehicle in the course of his employment as a helper-cum-second driver and, therefore, he could not be termed as a gratuitous passenger; rather, his risk was statutorily covered under Section 147 of the Motor Vehicles Act, 1988, to the extent of the liability arising towards an employee. Learned counsel further argued that the finding of rash and negligent driving recorded by the learned Tribunal was duly supported by the evidence on record and the mere recital in the DDR to the effect that the driver attempted to save stray cattle did not absolve him of negligence, particularly when the vehicle went out of control and struck against a house. Learned counsel also submitted that the addition towards future prospects was rightly granted in view of the law laid down by the ***Hon'ble Supreme Court in National Insurance Company Limited versus Pranay Sethi and others***, and the compensation was assessed strictly in accordance with the settled principles. It was lastly contended that no cogent or reliable evidence was led by the appellant–Insurance Company to prove any willful or fundamental breach of the terms and conditions of the insurance policy and, therefore, the learned Tribunal rightly fastened the liability jointly and severally upon the driver, owner and the insurer.

DISCUSSION & REASONING

6. I have learned counsel for the parties and perused the paper-book of the case.

QUESTION WITH REGARDS TO NEGLIGENCE

7. The learned Tribunal recorded a categorical finding that the accident in question occurred on account of rash and negligent driving of the offending

vehicle, which finding is duly borne out from the oral as well as documentary evidence available on record. It is by now well settled that in the proceedings arising out of a petition under Section 166 of the Act, the claimants are required to establish their case on the touchstone of preponderance of probabilities and not by adopting the strict standard of proof as is required in a criminal trial. In ***Civil Appeal No. 2358 of 2009*** arising out of ***SLP (C) No. 280 of 2006*** titled as ***"Bimla Devi vs. Himachal Road Transport Corporation"*** the Hon'ble Apex Court authoritatively held that strict standard of proof is not required in motor accident claim cases and the Tribunal is competent to arrive at its conclusion on the basis of the material placed on record. Similarly, in ***Civil Appeal Nos. 2499-2500 of 2018*** arising out of ***SLP (Civil) Nos. 28141-42 of 2017*** titled as ***"Mangla Ram vs. The Oriental Insurance Co. Ltd. and Ors."*** it was held that the non-registration of a criminal case or even the acquittal of the driver cannot be treated as conclusive for determining negligence in claim proceedings.

7.1 In the present case, the fact that a heavy vehicle went out of control and struck against a house by itself attracts the doctrine of *res ipsa loquitur,* which literally means "the thing speaks for itself". The said principle is invoked in situations where the nature of the accident is such that it would not have occurred in the ordinary course of events without negligence and the attending circumstances reasonably point towards the negligence of the person in control of the vehicle. Once this principle is attracted, the burden shifts upon the driver to explain that the accident occurred despite taking due care and caution. The explanation sought to be drawn from the DDR that the vehicle went out of control while attempting to save stray cattle does not in any manner displace the inference of negligence, for the reason that it was incumbent upon the driver of a heavy motor vehicle to regulate the speed and maintain proper control so as to meet any

foreseeable obstruction on the road. The presence of stray cattle on a public road is neither an unforeseeable nor an unavoidable circumstance so as to completely exonerate the driver from the duty of care. In such, circumstances, the loss of control over the vehicle itself is demonstrative of lack of due caution and reasonable care. Consequently, the finding of negligence recorded by the learned Tribunal does not suffer from any infirmity and is hereby affirmed.

QUESTION WITH REGARD TO LIABILITY OF INSURER

8. Admittedly, the deceased was travelling in the offending goods vehicle in the course of and arising out of his employment as a helper-cum-second driver and, therefore, he cannot be treated as a gratuitous passenger. A person so travelling in a goods carriage in his capacity as an employee is covered by the statutory policy to the extent of the liability fastened under the provisions of the Employees' Compensation Act. The contention raised on behalf of the appellant that such a person does not fall within the ambit of the expression "any person" occurring in Section 147 of the Motor Vehicles Act, 1988 is misconceived and contrary to the settled position of law. In ***"National Insurance Co. Ltd. v. Swaran Singh,"*** reported as ***2004 (3) SCC 297*** the Hon'ble Supreme Court has held that the insurer is statutorily liable to indemnify the insured in respect of third-party risk and the burden to establish a willful breach of the policy conditions lies squarely upon the insurer. The concept of "third party" has received authoritative interpretation in ***"Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd.,"*** reported as ***AIR 1977 SC 1735*** wherein it was observed that the policy of insurance is intended to cover the risk of persons other than the insured and the insurer, and any person travelling in the vehicle with the consent of the insured,

other than those specifically excluded, would fall within the ambit of third party in the context of compulsory insurance.

8.1 In Stroud's Judicial Dictionary the meaning of the words 'third party risk' has been given as below:

> *"Third Party Risks refer to a legal structure in insurance where the insurer is one party, the policyholder is the second party, and claims made by others regarding the negligent use of vehicle are considered claims by "third parties".*

8.2 The Privy Council in ***"Dogby v. General Accidents Fire Assurance Corporation, (1943) AC 121,"*** has also interpreted the words 'third party risk' in the line interpreted in the Stroud's Judicial Dictionary. In the definitions given in Section 145 of the new Act, 'third party' is defined to include the Government. A third party risk policy covers liabilities for death or injury caused to a third person or damage caused to property of a third party arising out of the use of a motor vehicle. Third party policy is, therefore, wider than the Act Policy; it covers liabilities arising from injury to person or property of a third party or from death of a third party arising out of the use of a Motor Vehicle insured. Act Policy means an insurance policy which is issued by an insurer and obtained by the assured under a mandatory provision of the Act.

8.3 In the present case, the deceased, being an employee travelling in the vehicle in connection with the work of the owner, squarely falls within the category of a person whose risk is statutorily required to be covered. Consequently, the argument that he is not covered under the expression "any person" is devoid of merit and is accordingly rejected.

QUESTION WITH REGARD TO QUANTUM AND BREACH OF POLICY

9. As regards the quantum of compensation, this Court finds that the learned Tribunal has assessed the income of the deceased, applied the appropriate multiplier and made the requisite deductions strictly in accordance with the settled principles governing the field. The addition towards future prospects has been granted in consonance with the law laid down by the Constitution Bench of the Hon'ble Supreme Court in ***"National Insurance Co. Ltd. v. Pranay Sethi,"*** reported as ***(2017) 16 SCC 680*** wherein it has been authoritatively held that such an addition is a necessary component while determining the loss of dependency. Likewise, the selection of the multiplier and the deduction towards personal and living expenses are in tune with the parameters laid down in ***"Sarla Verma v. DTC"*** reported as ***2009 (3) RCR (Civil) 77***. Learned counsel for the appellant has not been able to point out any arithmetical mistake or any legal infirmity in the computation of compensation so made by the Tribunal. With regard to the plea of breach of policy conditions, except for raising a bald and vague assertion, no cogent, reliable or affirmative evidence has been brought on record by the appellant–Insurance Company to establish that the driver of the offending vehicle was not holding a valid and effective driving licence at the relevant time or that there was any conscious and wilful violation of the terms and conditions of the insurance policy on the part of the insured. In terms of the law laid down by the Hon'ble Supreme Court in ***Swaran Singh's case (supra),*** the burden to prove such breach squarely lies upon the insurer, and in the absence of any such proof, the statutory liability to indemnify the insured cannot be avoided. In view of the foregoing discussion, this Court is of the considered opinion that the award passed by the learned Tribunal is based upon a correct appreciation of the evidence and

the applicable legal principles and does not suffer from any illegality, perversity or material irregularity warranting interference in the present appeal.

10. Consequently, the present appeal being devoid of merit is hereby dismissed. The Award dated 17.02.2017 passed by the learned Motor Accident Claims Tribunal, Bathinda is hereby upheld in toto. The amount awarded, if not already released, shall be disbursed to the claimants/respondents No. 1 to 4 in accordance with the terms and conditions laid down by the learned Tribunal. All pending applications, if any, also stand disposed of.

(HARKESH MANUJA)
JUDGE

March 06, 2026
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No