

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O No.451 of 2005

Date of Decision. 29.10.2010

Oriental Insurance Company Limited, through its Assistant Manager,
SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Smt. Sheela widow of Shri Suleram, resident of Kailash Colony,
Palwal, Distt. Faridabad and others

.....Respondents

2. FAO No.452 of 2005

Oriental Insurance Company Limited, through its Assistant Manager,
SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Smt. Babita Devi wd/o Late Shri Vinod Rawat, resident of village
Rewata, District Lakhi Sarari (Bihar) at present Sanjay Colony, New
Delhi and others

.....Respondents

3. FAO No.453 of 2005

Oriental Insurance Company Limited, through its Assistant Manager,
SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Smt. Premwati wife of Yad Ram, resident of Krishna Colony, Palwal,
District Faridabad and others

.....Respondents

4. FAO No.454 of 2005

Oriental Insurance Company Limited, through its Assistant Manager,
SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Smt. Prem widow of Jaggan, resident of Kailash Colony, Palwal,
District Faridabad and others

.....Respondents

5. FAO No.455 of 2005

Oriental Insurance Company Limited, through its Assistant Manager,
SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Smt. Puran Devi widow of Tantloee, resident of Kailash Colony, Palwal, District Faridabad and others

.....Respondents

6. FAO No.456 of 2005

Oriental Insurance Company Limited, through its Assistant Manager, SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Shafadi widow of Budh Singh, resident of Kailash Colony, Palwal District Faridabad and others

.....Respondents

7. FAO No.457 of 2005

Oriental Insurance Company Limited, through its Assistant Manager, SCO No.109-111, Sector 17-D, Chandigarh

.....Appellant

Versus

Ganesh son of Suleram son of Chetu Ram, resident of Kailash Colony, Palwal, District Faridabad and others

.....Respondents

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Anil Shukla, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. All these appeals arise out of a single accident that resulted by a collision of the maruti van with the insured's truck. The accident was said to have taken place when the driver of the maruti van had signalled for overtaking the truck and after he secured an indication from the truck that he could overtake, when the maruti van was in the process of overtaking, the truck had suddenly swerved to the right

resulting in a collision with the maruti van and the passengers in the maruti van who were as many as six died and one person was injured. The Tribunal took the accident to be the result of negligent driving of the driver of the insured's truck. It is contended by the learned counsel appearing on behalf of the insurance company, which had the benefit of defence under Section 170 of the Motor Vehicles Act that it was not a case of head on collision or a collision where the truck had gone to the wrong direction to dash against the maruti van. The driver of the maruti van was overtaking the vehicle in a negligent manner and the accident was only the result of negligence of the driver of the maruti van and at any rate, it should have been a case of contributory negligence and not exclusive negligence on the part of the driver of the truck. This contention could have been accepted if the driver of the truck had also examined and explained that the negligence attributed to him was not correct or that he had not swerved the vehicle close to the maruti van to cause a collision. The best evidence, which ought to have been placed by the insured's driver had not been placed before the Tribunal and therefore, adverse inference ought to be drawn against the driver of the truck. The finding by the Tribunal, under the circumstances, casting the liability of the accident only on the driver of the truck cannot be faulted. I affirm the said finding.

2. It is further contended on behalf of the insurance company that there were seven passengers in the maruti van when the sitting capacity of the van was only for six. Consequently, it is contended by the learned counsel that the liability could be restricted only to claim

emanating from the highest of the awards for the six and that the amount could be distributed for all others in the light of the judgment of the Hon'ble Supreme Court in National Insurance Company Limited. Vs. Anjana Shyam and others (2007) 7 SCC 445. The application of this rule will arise in cases where it is brought on record that the insurance cover is itself only for six passengers and not for seven and that further the accident was the result of such overloading of the vehicle. For both these contentions, there must be adequate pleadings. There has been no pleading to such an extent and consequently, the Tribunal, therefore, also did not have an occasion to examine the same in the light of the judgment of the Hon'ble Supreme Court in Anjana Shyam's case (supra). I cannot permit the insurer to take up such a plea for the first time at the time of arguments in appeal when such a contention was also not taken in the grounds of appeal. The liability shall be, therefore, to satisfy the claims emanating from the representatives of the deceased and injured person, who was travelling in the vehicle.

3. As regards the quantum of compensation in all the cases relating to death, the Tribunal has taken the income in the range of Rs.2100/- to Rs.3,000/- and adopted multiplier in the manner laid down through decisions of the Hon'ble Supreme Court. The tabulation of the claims of all the persons are given as under:-

Sr. No.	FAO No. & status	Claimants	Earning	Age	Dependency	Multiplier	Misc. Expenses	Total Compensation
1	451/2005 (death)	Wife, children and mother	3,000/-	60	2500 PM (Unit System) (5 dependents)	8	Funeral expenses 2,000 Loss of consortium 5,000 Transport expenses 2,000 interest 6%	Rs.2,49,000/-
2	452/2005 (death)	Wife, minor children	3,000/-	35	2000 PM (3 dependents)	17	Funeral Expenses 2,000 Loss of consortium 5,000 Transport Expenses 2,000 interest 6%	Rs.4,17,000/-

Sr. No.	FAO No. & status	Claimants	Earning	Age	Dependency	Multiplier	Misc. Expenses	Total Compensation
3	453/2005 (death) unmarried	Mother & Father	2,100/-	24	1410 PM 1/3 rd	17	Funeral expenses 2,000 Loss of estate 2,500 Transport expenses 2,000 Interest 6%	Rs.1,91,300/-
4	454/2005 (death)	Widow & minor	3,000/-	40	Unit system 2500 PM	15	Funeral expenses 2,000 Loss of consortium 5,000 Transport expenses 2,000 interest 6%	Rs.4,59,000/-
5	455/2005 (death)	Widow & minor	3,000/-	50	Unit system 2500 PM	11	Funeral expenses 2,000 Loss of consortium 5,000 Transport expenses 2,000 interest 6%	Rs.3,39,000/-
6	456/2005 (death)	Wife & 1 son	3,000/-	65	2,000 PM 1/3 rd	5	Funeral expenses 2,000 Loss of consortium 5,000 Transport expenses 2,000 interest 6%	Rs.1,29,000/-
7	467/2005 (injury case)	---	2,000/-	--	--	--	Injuries right had fracture of jaw, injury on nose and head. Medical expenses Rs.26,800/- Pan (undergoing operation 10,000 Pain and sufferings 20,000/-) Loss of income for 1 year Rs.24,000/- Transport expenses 5,000/-	Rs.85,800/-

4. Although it is contended that there was no proof of income, we are considering the cases of claims for all persons, whose income is taken to be Rs.3,000/- and less. I will not look for any proof of such income and it should be taken as the maximum that a person could have earned to sustain the living. The choice of multiplier in all the cases would require our re-examination. Learned counsel apparing for the insurance company points out in one case in FAO No.452 of 2005 where the income was taken as Rs.3000/-, deduction of 1/3d had been made and a multiplier of 17 had been taken. The learned counsel would point out that the appropriate multiplier for the deceased, who was aged 35, must be 15 or 16 and not 17. I find that the claimants in that case were the widow, aged parents and two children. The deduction in terms of the judgment of the Hon'ble Supreme Court in Sarla Verma Vs. DTC 2009(6) SCC 121 would be 1/4th but the Tribunal has taken the deduction at 1/3rd. If an appropriate deduction had been made and even if a lesser value is

taken for the multiplier at 16 instead of 17, the compensation which is determined already will work out approximately to the same. I do not, therefore, think its necessary to reappraise the compensation even in respect of case FAO No.452 of 2005.

5. The awards passed in all these cases are, therefore, confirmed and the appeals filed by the insurance company are dismissed.

(K. KANNAN)
JUDGE

October 29, 2010
Pankaj*