IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3008 of 2015 (O&M)
Date of Decision: May 01, 2015

The New India Assurance Company Limited

...Appellant

Versus

Sona Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Bashamboo, Advocate
for the appellant.

****

INDERJIT SINGH, J.

CM No.9056-CII of 2015

For the reasons mentioned in the application, the same is allowed. The delay of 9 days in re-filing the appeal is condoned.

FAO No.3008 of 2015

Appellant New India Assurance Company Limited has filed this appeal against respondents Sona Devi, Manoj Kumar (claimants), Ravinder alias Tona (driver) and Harjit Singh (owner) of offending vehicle, challenging the impugned Award dated 12.01.2015 passed by learned Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'Tribunal'), vide which ₹5,38,000/- along with interest at the rate of 7.5% per annum has been awarded to the claimants from the date of filing of petition till realization of the awarded amount.

The brief facts of the case are that Sona Devi and Manoj

VINEET GULATI
2015.05.18 11:52
I attest to the accuracy and
authenticity of this document
Chandigarh

Kumar claimants filed claim petition against Ravinder alias Tona (driver), Harjit Singh (owner) and The New India Assurance Company Ltd. (Insurer) of the offending TATA LPT 909 No.HR-39-8795, under Section 166 of the Motor Vehicles Act. It is mainly stated in the claim petition that on 09.10.2011, Chuhar Ram along with Pola was coming from village Dakala to village Balbehra on his motorcycle bearing registration No.HR-09B-9624. The motorcycle was driven by Chuhar Singh and Pola was pillion rider. At about 7.00 A.M., when they reached near Ram Nagar Sale Tax Barrier, a truck bearing registration No.HR-39-8795 owned by Harjit Singh, was parked on the road without any reflection/indicator or parking light or any other precaution or signal of parking. The said truck was parked by respondent-driver Ravinder alias Tona on the highway in negligent manner as if a vehicle was passing the said parked truck, the parked truck was not visible due to reflection of light and as such, Chuhar Ram could not see the said parked truck and motorcycle hit with the said parked truck. Due to the impact, Chuhar Ram and Pola received multiple and serious nature of injuries. They were taken to the hospital but on the way to the hospital, Chuhar Singh succumbed to the injuries. Formal FIR was recorded. Post mortem examination was conducted on the dead body.

Claimants examined PW-1 Dr.Kushaldeep Gill, PW-2 Pola eye witness and claimant Manoj Kumar examined himself as PW-3 and have also placed reliance upon the documents copy of FIR Ex.PA, copy of final report Ex.PB, copy of photo identity card Ex.PC

VINEET GULATI
2015.05.18 11:52
I attest to the accuracy and
authenticity of this document
Chandigarh

and Ex.PD.

On the other hand, respondents driver and owner have tendered documents regarding National Permit, copy of fitness certificate, copy of insurance policy, copy of registration certificate and driving licence.

At the time of arguments, learned counsel for the appellant argued only on one point that accident has occurred due to contributory negligence of the deceased as well as the truck driver. No other point has been argued.

I have heard learned counsel for the appellant and have gone through the record.

First of all, the plea regarding contributory negligence has not been taken by any of the respondent (in claim petition) before the Tribunal. Secondly, no evidence has been led regarding contributory negligence of the deceased in the accident in question. No witness of the appellant came to the witness box to deposed regarding contributory negligence. Even the driver of the offending truck has not come to the witness box to state that the truck was properly parked in the parking lot. Therefore, it is clear that there is no such plea nor any such evidence on the record regarding contributory negligence.

Next, I find that even before the Tribunal, there is no such argument of any of the counsel regarding contributory negligence. This plea first time cannot be taken before this Court in the arguments only. Even otherwise, there is nothing on the record to show in the evidence or in the facts and circumstances of the case that the

VINEET GULATI
2015.05.18 11:52
I attest to the accuracy and
authenticity of this document
Chandigarh

deceased was also negligent. It is the specific case of the claimants that there was no signal, indicator etc. to show parking of the truck. The accident took place at 7.00 P.M. and it is the case of the claimants that due to the lights of the vehicle coming from the opposite direction, the deceased could not see the parked truck. Otherwise also, the law is that nobody would create obstruction in the highway and if anybody obstruct the highway, strict/absolute liability is there. So, in no way, it is the case of contributory negligence.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***Raj Rani and others vs. Oriental Insurance Co. Ltd. and others, 2009 ACJ 2003***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case, both the Tribunal as well as High Couirt had held contributory negligence of the deceased, which are not the facts in the present case.

In view of the above discussion, I find that findings in the Award dated 12.01.2015 given by the Tribunal are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

May 01, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**

VINEET GULATI
2015.05.18 11:52
I attest to the accuracy and
authenticity of this document
Chandigarh