

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

**FAO No.3801 of 2015 (O&M)**  
**Date of Decision: July 13, 2015**

Shriram General Insurance Co. Ltd.

...Appellant

Versus

Smt.Sunita Devi and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Ashwani Talwar, Advocate  
 for the appellant-Insurance Company.

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**INDERJIT SINGH, J.**

**CM No.11571-CII of 2015**

For the reasons mentioned in the application, the same is allowed. The delay of 31 days in filing the appeal is condoned.

**FAO No.3801 of 2015**

Appellant Shriram General Insurance Co. Ltd. has filed this appeal against claimants-respondents Smt.Sunita Devi and others, Jagdish, driver and Bahadur Singh, owner of truck bearing registration No.HR-66C-0351 (offending vehicle), challenging the impugned Award dated 08.01.2015 passed by learned Motor Accident Claims Tribunal, Narnaul, (hereinafter referred to as 'Tribunal'), vide which compensation of ₹9,11,065/- was awarded to the claimants along with interest @ 9% per annum from the date of presentation of the petition

till realization of the amount.

The brief facts of the case are that claimants Smt.Sunita Devi and others filed claim petition against Jagdish, driver, Bahadur Singh, owner and Shriram General Insurance Company Limited, Insurer of offending truck under Section 166 of the Motor Vehicles Act, 1988. As per the case of the claimants, on 23.10.2013, Raj Singh @ Lala Ram was going in truck bearing registration No.HR-66C-0351 being second driver from Narnaul to Behror and sitting on the left side near the window in the truck. At that time, respondent-Jagdish was driving the truck at a high speed, in a rash and negligent manner. At around 3.00 P.M., when the truck reached near Bus Stand Nareha, Raj Singh heard some noise and when he peeped from the window, respondent-Jagdish took a sharp turn and applied brakes. Suddenly, the window opened and Raj Singh fell down from the truck on the road and he became unconscious. Respondent-driver Jagdish fled away. Raj Singh was rushed to Kailash Hospital where he succumbed to the injuries sustained in the accident in question. The accident was witnessed by Bir Singh. FIR was also got registered against Jagdish.

Learned Tribunal on the basis of evidence, decided the issue that, deceased Raj Singh had died due to rash and negligent driving of offending vehicle by respondent-Jagdish, in favour of the claimants and against the respondents. The Tribunal computed the compensation of ₹9,11,065/- and passed the Award.

Aggrieved from the above-said Award, present appeal has been filed by the Insurance Company.

At the time of arguments, learned counsel for the appellant-Insurance Company argued that it is a case of contributory negligence. The deceased was the second driver and sitting in the truck itself but he was not tying the seat belt and the window was not locked from inside and as per the evidence of eye witness, there was no curve on the spot.

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

First of all, I find that respondent-driver has been proceeded against ex parte in the claim petition. Respondent-owner has denied date, time, place and manner of the accident and stated that a false case has been registered. The owner has not taken any plea of contributory negligence nor there is anything that the deceased was not tying the seat belt or the window was not locked from inside etc. Respondent-Insurance Company (present appellant) has also taken the plea that no such accident has taken place. Insurance Company has also not taken the plea that the deceased was himself negligent or not wearing the seat belt or locked the window etc., as argued. Therefore, from the written statements, it is clear that it is nowhere the case of the appellant-Insurance Company or driver and owner that it is case of contributory negligence and deceased himself was negligent.

Secondly, I find that no respondent witness has come to the witness box to depose that it is case of contributory negligence.

The mere fact that there was no curve on the road at the place of

accident, will not prove that it is case of contributory negligence. As per the case of the claimants, Raj Singh was the second driver and was sitting in the truck. When he heard noise, he peeped out from the window and suddenly the driver of the offending vehicle turned the truck and applied brakes, due to which the window opened and Raja Singh fell down. These facts clearly show that accident has occurred due to rash and negligent driving of respondent-Jagdish, driver of the offending vehicle. There is nothing on the record to prove that it is a case of contributory negligence. The findings regarding contributory negligence cannot be given on surmises and conjectures or by presuming some facts.

Keeping in view the above discussion, I find that the findings given by the Tribunal are correct, as per law and do not require any interference from this Court and the same are upheld.

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

**July 13, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**