

In the High Court of Punjab and Haryana at Chandigarh

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(1) CM No.12604-CII of 2015 and  
F.A.O. No.3989 of 2015 (O&M)

.....

Date of decision:3.7.2015

National Insurance Company Limited

.....Appellant

v.

Kusum Gupta and others

.....Respondents

....

(2) F.A.O. No.3990 of 2015 (O&M)

.....

National Insurance Company Limited

.....Appellant

v.

Kavita Gupta and others

.....Respondents

....

**Coram : Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Sandeep Suri, Advocate for the appellant in both the  
appeals.

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**Inderjit Singh, J.**

CM No.12604-CII of 2015:

For the reasons mentioned in the civil miscellaneous  
application, the delay of 27 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. Nos.3989 & 3990 of 2015:

This order will dispose of the above mentioned two FAOs filed by Insurance Company, as the same have arisen out of the same accident and same award and regarding the death of Manoj Kumar Gupta.

The brief facts of the cases are that one claim petition has been filed by Kavita Gupta-wife and Baby Saima Gupta minor daughter of Manoj Kumar Gupta and the other was filed by Kusum Gupta mother of Manoj Kumar Gupta regarding the death of Manoj Kumar Gupta in a motor vehicle accident. As per the claim petitions on 28.11.2011, Manoj Kumar Gupta (since deceased) was coming from Paonta Sahib side in his car No.HP-17B-7390. At about 10.00 p.m., when he reached near Village Faizpur on Jagadhri Paonta Sahib Road, a truck No.HR-58-3084 (hereinafter referred to as 'the offending truck'), without any indication, reflector or backlights and violating the traffic rules, was lying parked in the middle of the road and due to the lights of coming traffic, Manoj Kumar Gupta could not see the wrongly parked truck and struck with the same and sustained multiple and grievous injuries on his person and died at the spot. The car was also badly damaged. Post-mortem examination on his dead body was conducted in Civil Hospital, Yamuna Nagar. FIR was registered.

It is the case of the claimants that the accident happened only due to the sole negligence of the Driver of the offending truck No.HR-58-3084. Manoj Kumar Gupta (since deceased) was 32 years of age and was working as Assistant Manager and was earning ₹17,000/- per month i.e.

₹12,000/- as salary and approximately ₹5,000/- per month as commission from Insurance Business. In the second claim petition, which was filed by mother of the deceased, the income was stated to be of ₹23,000/- per month.

Respondents No.1 and 2 in their written statement filed in the claim petition taken the plea that no accident took place with the vehicle of the answering respondents and the respondents have been falsely involved in the said claim petitions just to extort money from them. It is stated that false and frivolous FIR has been registered. It is also stated that on that date at about 10.00 p.m., the truck of the answering respondents became out of order and was standing on the 'Katcha berm' of the road. Indication was also given in this regard and from the back side car bearing No.HR-17B-7390 driven by Manoj Kumar Gupta in rash and negligent manner came and struck with the truck of the answering respondents, which was standing on the 'katcha berm' of the road.

Respondent No.3-Insurance Company in the claim petition also took the same plea. It is also stated by the Insurance Company that the offending truck was never involved in any accident.

The learned Tribunal after discussing the evidence on record held that Manoj Kumar Gupta died in the accident due to rash and negligent driving of the offending truck No.HR-58-3084 by respondent Jai Parkash and the claim amount is awarded to claimant No.1 Kavita Gupta at ₹7,80,500/-, claimant No.2 Baby Saima Gupta was held entitled to receive ₹4,68,300/- and claimant Kusum Gupta of the second claim petition was held entitled to receive an amount of ₹3,12,200/- along with interest @9%

per annum from the date of the claim petitions till realization.

Learned counsel for the appellant in both the appeals argued that it is a case of contributory negligence and secondly the income assessed by the learned Tribunal @₹12,000/- per month is on higher side.

After hearing leaned counsel for the appellant and after going through the record, I find that first of all as regards the assessment of the income, it has been assessed as per the income tax return filed by the deceased with the Income-Tax authorities. Therefore, on this ground, in no way, it can be held that the income has been assessed on higher side by the learned Tribunal. Otherwise also, only ₹12,000/- per month income has been assessed and the person was doing the service and the salary certificate Ex.P.11 as also the Income-Tax Returns Ex.P.10 have been placed on the record. Therefore, the learned Tribunal has correctly assessed the income of deceased Manoj Kumar Gupta. Therefore, this argument of the learned counsel for the appellant does not sustain.

As regards, the second argument regarding the contributory negligence as per the claimants' case, the truck was parked on metalled road in the middle and neither indicators were on nor there was any blinking lights or reflector sign to show the parking of the offending truck on the road. The claimants have examined Vinod Mittal PW-2, who had deposed as per claimants' version and has specifically stated that the offending truck was parked in the middle of the road without any indicator, reflector and Manoj Kumar Gupta could not see the truck due to flash lights of the coming vehicles. The FIR has also been registered against the driver of the

truck. The counsel for the claimants also tendered into evidence copy of report filed under Section 173 Cr.P.C. Ex.P.5, copy of charge-sheet Ex.P.6, copy of site plan Ex.P.7, copy of recovery memo Ex.P.8 on the record and these documents also support the version of the claimants.

On the other hand, respondents No.1 and 2 driver and owner of the offending truck have not led any evidence and respondent No.3- Insurance Company has only tendered into evidence insurance policy, which means the evidence produced by the claimants remained unrebutted on the file. It is settled law that the vehicles are not only to drive carefully, but the vehicles are also to be parked carefully and not in rash and negligent manner. If due to any mechanical defect the truck is to be parked in the middle of the road, then the indicators/reflectors should have been switched on and other precautions are also to be taken to show the parking of the truck on the road. The accident took place at night time and the offending truck was parked in the middle of the road without any indicator or sign. Therefore, it amounts to rash and negligent parking of the truck in the middle of the road and creating obstruction in the highway. Therefore, there is no question of contributory negligence nor there is any evidence on record to prove the same.

From the above, I find no merit in the arguments of the learned counsel for the appellant. The findings given by the Tribunal are correct, as per evidence and law. Therefore, the impugned award dated 14.1.2015 passed by the learned Tribunal does not require any interference from this Court and the same is upheld.

Therefore, finding no merit in the appeals, the same are dismissed.

July 3, 2015.

**(Inderjit Singh)**  
**Judge**

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