

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

FAO No.5368 OF 2015 (O&M)
DATE OF DECISION : 20th AUGUST, 2015

New India Assurance Company Limited

.... Appellant

Versus

Jangbir Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

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

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SURINDER GUPTA, J. (ORAL)

CM-16945-CII-2015

The application is allowed and Annexures A-1 to A-3 are taken on record, subject to all just exceptions.

CM-16946-CII-2015

Heard. There is delay of 8 days in filing the present appeal.

Learned counsel for the applicant-appellant submits that the delay of 8 days in filing the appeal is due to the procedural tangles involved in scrutiny of case and documents before the appeal is allowed to be filed by competent authority of appellant-company. However this delay is neither intentional nor any benefit has been taken by appellant on this account.

In view of submission made by learned counsel for the appellant and the facts mentioned in the application, the same is allowed and delay of 8 days in filing the appeal is, hereby, condoned.

FAO-5368-2015 (O&M)

1. This appeal has been filed by New India Assurance Company Limited (hereinafter referred as insurance company) against the award dated 01.04.2015 passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred as the Tribunal) whereby the claim petition filed under Section 166 of Motor Vehicles Act, 1988 by Jangbir Singh and Sabita Devi for the death of their son Yogesh (hereinafter referred as deceased) in motor accident with Maruti Ritz car bearing registration No.RJ-02CB-1341 (hereinafter referred as offending vehicle), was allowed and the compensation of ₹6,65,000/- was awarded.

2. As per the claimants, deceased and his uncle Satbir on separate motor cycle were coming home after closing their shop. Satbir was following the motor cycle of Yogesh. When they reached near Rajindera Public School, Sidhrawali, the offending vehicle which was being driven by respondent No.3-Sanjay Kumar in a rash and negligent manner hit the motor cycle of the deceased from behind, who fell on the road and suffered serious multiple injuries. Satbir Singh stopped the motorcycle, lifted his nephew but by that time he had succumbed to the injuries received by him. The deceased was taken to General Hospital, Gurgaon where his post mortem examination was conducted. The matter was reported to the police and FIR No.278 dated 24.12.2012 was registered

against respondent No.1 for offence punishable under Sections 279 and 304A IPC.

3. It was alleged that the deceased was 20 years of age. He was running a mobile repair shop and earning ₹16,748/- per month and was income tax assessee. Compensation of ₹40,00,000 (rupees forty lakh) was claimed by the petitioners-respondents No.1 and 2 for death of their son.

4. Respondents No.2 and 4 owner and driver of the offending vehicle denied that the accident had taken place due to the rash and negligent driving of the offending vehicle by respondent No.3. The insurance company i.e. the appellant also contested the claim petition on merits and also with the plea that the respondent No.3-Sanjay was not having a valid and effective driving license.

5. The tribunal on perusal of the evidence reached the conclusion that the accident had taken place due to the rash and negligent driving of offending vehicle by Sanjay (respondent No.3.). The above observations in para 11 of the award are as follows:

“11. After hearing both the parties and careful perusal of the pleadings and the evidence available on record, I am of the considered view that the accident dated 23.12.2012 took place due to rash and negligent driving of offending vehicle by respondent No.1 and this fact is proved with the help of testimony of PW1 Satbir Singh, who tendered his affidavit Ex.PW1/A with the same averments as detailed in the claim petition that the accident was caused due to rash and negligent driving of the offending vehicle by respondent No.1.”

6. Learned counsel for the appellant has argued that this fact was not proved on record that the accident had taken place with the offending vehicle. The number of offending vehicle and name of the driver were not disclosed in the FIR. The testimony of Satbir the alleged eye witness was not credible as he had stated while appearing as PW-1 that he had not noted the number of the offending vehicle at the time of accident and the driver of the offending vehicle was not known to him.

7. This fact is not disputed that after registration of the FIR the matter was thoroughly investigated by the police and the final report under Section 173 Cr.P.C. was filed against the driver of the offending vehicle. Sanjay Kumar (respondent No.3) has not stepped into witness box to refute the allegations made against him and the testimony of Satbir is unrebutted. It is immaterial that the number of the car was not disclosed in the FIR. This fact was specifically disclosed that the Maruti Ritz car had caused the accident.

8. In view of the above, no fault can be found with the observations of the Tribunal.

9. Quantum of compensation awarded by the tribunal has not been challenged by the appellant. No other point has been argued by learned counsel for the appellant. This appeal has no merit and is accordingly dismissed.

20th August, 2015
'raj'

(SURINDER GUPTA)
JUDGE