

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

FAO No.2484 of 2012

Date of decision : 17.10.2016

Reliance General Insurance Co. Ltd.

.....Appellant

Versus

Rajesh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Arun Sharma, Advocate for appellant.

Mr. Naveen Sharma, Advocate for
Mr. Rajneesh Chadwal, Advocate for respondent No.1.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-Insurance Company against the award dated 19.10.2011, passed by learned Motor Accidents Claims Tribunal, Narnaul (hereinafter called the “Tribunal”), vide which respondent No.1-claimant Rajesh has been awarded compensation to the tune of ₹7,64,088/- on account of the injuries suffered by him in the motor vehicular accident which took place on 24.05.2010.

2. The present appeal has been preferred by the appellant-Insurance Company to assail the award.

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Learned counsel for the appellant-Insurance Company contended that it was a case of contributory negligence. PW-4 Sher Singh, the sole witness of the occurrence examined by the claimant, has categorically admitted that it was a head on collision. He also admitted in the cross-examination that the width of the road at the place of accident was enough for two or three vehicles to pass at one time. Thus, he contended that as the accident was head on collision so claimant Rajesh himself, who was driving the motorcycle at the time of the accident, was contributory negligent. Thus, he contended that the compensation awarded by the learned Tribunal is exorbitant.

5. On the other hand, learned counsel for respondent No.1-claimant contended that from the statement of PW-4 Sher Singh the witness of the occurrence it comes out that respondent No.2 Daya Ram Yadav, the driver of Marshal jeep, was solely negligent for causing this accident. The driver of the jeep has not been examined to show any negligence on the part of the claimant. He contended that mere this fact that both the vehicles had head on collision will not be a ground to hold the claimant contributory negligent.

6. I have duly considered the aforesaid contentions.

7. On the issue of negligence the claimant has examined PW-4 Sher Singh the witness of occurrence. As per statement of PW-5 Smt. Sarita Devi, the claimant himself had become disabled due to head injury to make the statement.

8. No doubt PW-4 Sher Singh has admitted in his testimony

that it was a head on collision and the width of the road at the place of accident was enough that two or three vehicles can easily pass at one time, but mere this fact that it was head on collision is no ground to conclude that it was a case of contributory negligence on the part of the claimant. The head on collision between two vehicles approaching from the opposite direction can occur in various situations. Even if a vehicle comes on the wrong side and hit the vehicle coming from the opposite side on the correct side of the road, there will be head on collision. Thus, mere head on collision cannot be a determining factor to record the finding of the contributory negligence.

9. In the instant case though PW-4 Sher Singh has admitted that the road was wide enough at the place of the accident that two or three vehicles could have passed at the same time but there is no further evidence as to what was the actual place of accident, whether the accident has taken place in the middle of the road or on the side of the road and further on which side of the road. Respondent No.2 Daya Ram Yadav the driver of the jeep has also not stepped into the witness box to allege any negligence on the part of the claimant in driving the motorcycle. Thus, in these circumstances there is no material to record the finding that claimant Rajesh was contributory negligent for causing this accident.

10. Consequently, the findings recorded by the learned Tribunal that the present accident has taken place due to rash and negligent driving of the driver of the jeep requires no interference and are hereby affirmed.

11. No other point was raised before this Court at the time of the arguments.
12. Thus, keeping in view my aforesaid discussion, the present appeal has no merits and the same is hereby dismissed.

17.10.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No