

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

FAO-1669-2015 (O&M)

Date of decision: 21.01.2016

National Insurance Co. Ltd.

...Appellant

Versus

Smt. Suman and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

JITENDRA CHAUHAN, J. (Oral)

CM-4926-CII-2015

For the reasons contained in the application, the same is
allowed and the delay of 17 days in filing the appeal is condoned.

Main case

The insurer has laid challenge to the impugned Award
dated 11.11.2014, passed by the learned Motor Accident Claims
Tribunal, Karnal (for short, 'the Tribunal').

The learned counsel refers to the circumstance leading
to the accident to contend that it being a head-on collision between

two motorcycles, is a case of contributory negligence. It is further argued that 50% increase granted towards the future prospects is unjustified as the deceased was a labourer.

I have heard the learned counsel for the appellant and perused the record.

The sole witness to the accident, PW-2, Surinder Kumar, has deposed that on 19.10.2012, at 4.30 p.m., he along with Ved Parkash, was going to village Bhutan Kheri, on their motorcycles. Ved Parkash was going ahead of him on the motorcycle while driving on the left hand side of the road, at a moderate speed. The motorcycle bearing registration No.HR-75-8700, being driven by Amarjeet in a rash and negligent manner came from the opposite direction and hit against the motorcycle of Ved Parkash by coming on the wrong side of the road. His version is fortified from the fact that an FIR was registered against Amarjeet Singh with regard to the accident. The copy of the report under Section 173 Cr.P.C. placed on record as Ex.P3 also proves that after investigation, the police had reached the conclusion that the accident took place due to rash and negligent driving of motorcycle in question. He also tendered his affidavit, Ex.DW2/A, in support of his testimony. The evidence led by the claimants remained un rebutted. Thus, the learned Tribunal, while dealing

with Issue No.1 has rightly recorded the finding that the accident in question took place to the sole rash and negligent driving by Amarjeet Singh, since deceased and no fault can be found therewith.

The second contention raised by the learned counsel with regard to the grant of future prospects is also without any merit. Till date, there is no judgment of the Hon'ble Supreme Court, wherein, the law laid down in ***Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54***, with regard to grant of future prospects, has been reversed. In ***Indo Swiss Time Ltd. v. Umrao and others, AIR 1981 P&H 213(1)***, it has been laid down as under:-

“22. A perusal of the judgments in the Municipal corporation of the City of Ahmedabad (1970) 1 SCWR 183 and Himalaya Tiles' (AIR 1980 SC 1118) cases would plainly indicate that there is a direct conflict on the point therein Both the judgments have been rendered by a Bench Consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the fore the somewhat intricate question which is now not of infrequent occurrence namely... 'when there is a direct conflict between two decisions of the Supreme court rendered by coequal Benches, which of them should be followed by the High Courts and the Courts below'.

23. Now the contention that the latest judgment of a

co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior court are of co-equal benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extent than both of them cannot be binding on the courts below. Inevitably a choice though a difficult one has to be made in such a situation. On principles of it appears to me that the high Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant.'

In view of the above, the instant appeal is hereby dismissed. The statutory amount, if any, deposited at the time of filing this appeal, be placed at the disposal of the learned Tribunal for disbursement.

21.01.2016
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(JITENDRA CHAUHAN)
JUDGE