

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

FAO No.4384 of 2015 (O&M)

Date of decision : 22.04.2016

The Oriental Insurance Company

.....Appellant

Versus

Gurpreet Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Prabhjot Kaur, Advocate for
Mr. S.S. Sidhu, Advocate for the appellant.

Mr. Narinder Sharma, Advocate for respondents No.1 & 2.

Ms. Alka Joshi, Advocate for respondent No.6.

DARSHAN SINGH, J.

The present appeal has been preferred by The Oriental Insurance Company, respondent No.3 before the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter called the 'Tribunal'), against the award dated 10.04.2015 passed by the learned Tribunal, whereby claimants-respondents No.1 & 2 have been awarded compensation to the tune of Rs.13,66,568/- on account of death of Devinder Singh in the motor vehicular accident, which took place on 12.05.2013.

2. The appellant-Insurance Company has filed this appeal to assail the impugned award passed by the learned Tribunal.

3. Learned counsel for the appellant-Insurance Company contended that respondent No.3 Shashi Pal, the driver of the truck, was not solely negligent for causing this accident. Even as per the admitted version of the claimants, the motorcycle on which the deceased was travelling skidded due to mud lying on the road and as a result of which, the deceased fell down on the road and met with the accident. She contended that it was a case of contributory negligence of the driver of both the vehicles but the learned Tribunal has not taken into consideration this aspect of the case.

4. On the other hand, learned counsel for respondents No.1 & 2-claimants contended that the deceased was not driving the motorcycle. He was only a pillion rider. So, there could be no question of the deceased being contributory negligence. Moreover, he contended that the criminal case has been registered against the driver of the truck who was solely responsible for causing this accident.

5. I have duly considered the aforesaid contentions.

6. As per the case of the claimants, on 12.05.2013 at about 8:00 *a.m.*, the deceased was travelling on motorcycle bearing registration No.PB-23K-5987 as pillion rider and was going to Manikaran Sahib. The motorcycle in question was being driven by his friend Sukhchain Singh. When they reached near village Bhumak, the motorcycle skidded due to the mud lying on the road. As a result of which, the motorcyclist and the

deceased fell down on the road. In the meanwhile, the truck bearing registration No.HP-69-0762, being driven by respondent No.3 Shashi Pal, came from behind at a fast speed in a rash and negligent manner and passed over the riders of the motorcycle. The deceased suffered multiple grievous injuries and as a result thereof, he succumbed to the injuries. The criminal case for causing this accident has been registered against the respondent No.3.

7. The claimants have examined Sukhchain Singh as PW-2 who is the witness of the occurrence and was driving the motorcycle bearing registration No.PB-23K-5987, on which the deceased was pillion rider. He categorically deposed that when they reached near village Bhumak, then due to mud lying on the road the motorcycle skidded. He along with Devinder Singh fell on the road. In the meantime, a truck bearing registered No.HP-69-0762 came at a very high speed, in a rash and negligent manner and passed over them, which resulted into the fatal injuries to deceased Devinder Singh.

8. There is no rebuttal to the evidence of the claimants on the mode of accident. Respondent No.3 Shashi Pal, the driver of the truck, did not step into the witness box in order to narrate their version of the occurrence. From the unrebutted evidence brought on record by the claimants, it comes out that the truck in question being driven by respondent No.3 was coming from behind. Respondent No.3 the driver of the truck was required to maintain the proper distance. If he would have been driving the truck carefully and consciously by maintain the proper

distance at moderate and controllable speed, he could have easily avoided the accident. The fact that the truck ran over the deceased coming from behind when he fell down on the road itself shows that the truck in question was driven by respondent No.3 at uncontrolled speed and violating the traffic rules by not maintaining the proper distance, which establishes that respondent No.3 the driver of the truck has caused this accident by driving the truck bearing registration No.HP-69-0762 in a rash and negligent manner. So, there could be no question of any contributory or composite negligence. Thus, no fault can be found with the findings recorded by the learned Tribunal on the issue of negligence.

9. No other point was raised before this Court at the time of arguments.

10. Thus, keeping in view my aforesaid discussion, the present appeal, being without any merits, is hereby dismissed.

22.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**