

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

FAO No.5300 of 2016 (O&M)

Date of decision : 07.09.2016

Reliance General Insurance Company Ltd.

.....Appellant

Versus

Smt. Sumitra and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sanjeev Kodan, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred by the Reliance General Insurance Company against the award dated 25.07.2016 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter called the “Tribunal”) vide which respondents-claimants No.1 to 4 have been awarded compensation to the tune of Rs.22,04,800/- on account of death of Satish in the motor vehicular accident, which took place on 06.01.2015.

2. The present appeal has been preferred by the appellant-Insurance Company (who was impleaded as respondent No.3 in the claim petition) to assail the award.

3. I have heard learned counsel for the appellant and have gone through the paper-book carefully.

4. Mr. Sanjeev Kodan, Advocate, learned counsel for the appellant-Insurance Company contended that the deceased was not a permanent employee. He was on probation. So, future prospects were not

admissible. He further contended that the victim was driving the motorcycle but he had no driving licence. So, he himself was at fault. Thus, he contended that the learned Tribunal has wrongly awarded the compensation to the claimants.

5. I have duly considered the aforesaid contentions.

6. As per the case of the claimants, the deceased was working as a Passenger Services Assistant in Air India. The claimants have examined PW-3 Rahul Kumar, Assistant Manager, Air India Sats Airport Services Pvt. Ltd., Delhi. He has brought the salary and employment record of deceased. In cross-examination PW-3 Rahul Kumar has stated that deceased was on probation period and was not confirmed. But mere this fact that the deceased was on probation it cannot be stated that he was not holding the permanent job as he was likely to be confirmed in due course of time. So, the learned Tribunal has not committed any illegality in awarding the future prospects towards the income of the deceased.

7. There is no dispute with the proposition of law that as per Section 3 of the Act, a driving licence is required to drive the vehicle in any public place. The absence of driving licence required under the provisions of the Act may be a contravention of the provisions of the Act but the absence of the driving licence will not *ipso facto* establishes the negligence on the part of the victim. In case ***Gujarat State Road Transport Corporation Vs. Thacker Narottam Kalyanji 2000(4) RCR (Civil) 507***, the Division Bench of Hon'ble Gujarat High Court while taking the note of ***Mahendra Singh Sohal Vs. Rameshkumar and others 1981 ACJ 326*** has

held as under:

“13. In *Mahendrasingh Sohal Vs. Rameshkumar & Ors. 1981 ACJ 326*, it has been observed that contributory negligence is not to be presumed merely from the fact that the driver did not hold a driving licence. It was further held that if the driver was driving the motor cycle with due care and caution in that case, it could not be held that he was liable for contributory negligence. In the case before us, the Tribunal found that there is no negligence on the part of the deceased. As such the plea of contributory negligence cannot be accepted. The Tribunal was therefore justified in rejecting the appellant's plea of contributory negligence of Anil Kumar.”

8. The same ratio of law has been laid down by the Division Bench of Hon'ble Allahabad High Court in case *National Insurance Co. Ltd. Vs. Ajij Ul-Haq and Anr. 2004 ACJ 2042*.

9. Moreover, in the instant case there is no evidence to establish that the deceased himself was negligent for causing this accident or he was in any way contributory negligent.

10. Consequently, the present appeal being without any merit is hereby dismissed.

07.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

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