

114

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

**FAO No. 5909 of 2016(O&M)
Date of Decision: 03.10.2016**

Bharti AXA General Insurance Co. Ltd.

....Appellant

Vs

Sh. Ashok Singh & ors.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjeev Goyal, Advocate,
for the appellants.

RAJ MOHAN SINGH, J.

CM-20241-CII-2016

For the reasons mentioned in the application, delay of 11 days in re-filing the appeal is condoned.

CM-20242-CII-2016

For the reasons mentioned in the application, delay of 13 days in filing the appeal is condoned.

Main case

[1] This is an appeal filed by the Insurance Company, challenging the award dated 25.04.2016 passed by Motor Accident Claims Tribunal, Faridabad, precisely on two grounds. Firstly, the deceased Surekha could have taken precaution by catching hold of

the parts of the three wheeler so as to avoid falling herself down on the road. Secondly, three wheeler in question was not covered under the definition of light transport vehicle.

[2] Having considered the submissions in the light of the facts on record, I find that the accident in question took place on 12.05.2014 when the deceased went to Ballabgarh from Palla by three wheeler for getting treatment along with her husband. The driver of three wheeler (hereinafter known as offending vehicle) was driving the same in a rash and negligent manner. At about 11:30 a.m, when they reached at the bye-pass road near rose garden, Sector 17, Faridabad, the driver of the three wheeler turned the vehicle, as a result of that Surekha fell down on the road. She sustained multiple injuries on her head and other parts of the body. She was taken to Metro Hospital, Sector-16, Faridabad, where Medico Legal report was prepared. Thereafter, she was referred to Safdarjung Hospital, New Delhi. Surekha was declared dead by the doctor on 15.05.2014.

[3] As regards point No. 1, the submission made by learned counsel for the appellant cannot be appreciated when the vehicle was being driven rashly and negligently and by taking sharp turn in a negligent manner, the occupant-Surekha fell down on the road. On account of proper care and caution, could have prevented the happening. The negligence was solely attributed to the driver of the vehicle. No contributory negligence can be presumed on the ground of alleged preventive mechanism as suggested by learned counsel for the appellant.

[4] Secondly, as per notification dated 05.11.2004 attached in the Motor Vehicles Act itself, three wheeler is very much covered under the definition of light transport vehicle in terms of Clause 5 of the said notification. On both the grounds, the claim made by the learned counsel for the appellant cannot be appreciated.

[5] In view of aforesaid, this appeal is found to be totally bereft of merit and the same is dismissed.

(RAJ MOHAN SINGH)
JUDGE

03.10.2016

sumit

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No