

FAO No.6162 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

FAO No.6162 of 2016(O&M)

Date of Decision: 17.10.2016

Shriram General Insurance Company Limited

---Appellant

versus

Shiv Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Punit Jain, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 20986-CII of 2016

Prayer in this application is for condoning delay of 52 days in re-filing the appeal.

In view of averments made in the application, supported by an affidavit of Sh. Punit Jain, Advocate, the application is allowed and delay of

52 days in re-filing the appeal stands condoned.

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The present appeal has been directed against award dated 9.3.2016 passed by the Motor Accidents Claims Tribunal, Panipat (in short “the Tribunal”) whereby compensation has been awarded in favour of respondents Shiv Devi and Ram Kirpal in regard to death of Subhash in a motor vehicular accident that took place on 21.5.2014.

Counsel for the appellant has assailed the award primarily on three counts. The first submission made by counsel is that the learned Tribunal has allowed benefit of future prospects despite the fact that the matter with regard to grant of future prospects is pending consideration before a larger Bench of Hon'ble the Supreme Court of India in view of reference made in *National Insurance Co. Limited vs. Pushpa and others* in a petition for Special Leave to Appeal (Civil)- 8058 of 2014. It is further argued that the present is a case of composite negligence but the entire liability to pay compensation has been fastened upon the driver, owner and insurer of Cantor No. HR-38T-4741. Another submission made by counsel is that the Tribunal has given recovery rights only against the owner/insured of the vehicle and not against driver of the vehicle.

I have heard counsel for the appellant, perused the paper book particularly the award passed by the learned Tribunal.

So far as the plea with regard to grant of future prospects is concerned, the said benefit cannot be denied merely because a reference is pending before a Larger Bench till the judgment passed by Hon'ble the Apex Court *Rajesh and others vs. Rajbir Singh and others 2013 (3) RCR (Civil) 170* is varied or set aside. Indisputably, the owner, driver or insurer of the other vehicle allegedly involved in the accident have not been impleaded as a party in the application for compensation. That being so, there was no occasion for the Tribunal to decide the question of composite negligence much less apportionment of compensation by the vehicles allegedly involved in the accident.

The plea of the appellant that the insurance company can claim recovery rights even against driver of the alleged offending vehicle is misconceived and liable to be rejected. There cannot be any denial that contract of insurance is between the insured and the insurer. As there is no privity of contract between the driver and the insurance company, the insurance company cannot ask right of recovery against the driver.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

17.10.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No