

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5147 of 2017 (O&M)
Date of decision:07.12.2017

National Insurance Company Ltd.

..... Appellant

Versus

Sharanjit Kaur and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Pardeep Goyal, Advocate for the appellant.

B.S. Walia, J. (Oral)

1. Solitary submission of learned counsel qua the challenge to the impugned award is that the learned Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) erred in not returning a finding of contributory negligence.

2. Learned counsel contended that the deceased Amrit Pal Kaur while driving the Activa scooter hit the bus which was going ahead of her due to her not maintaining a reasonable distance from the bus as a result of which she fell down, sustained injuries and died, therefore was guilty of contributory negligence.

3. I have considered the submissions of learned counsel and am of the view that the plea as raised is liable to be rejected in view of the findings recorded by the learned Tribunal in paragraph No.33 of the Award based on the statement of PW2 Jaspreet Singh, eye-witness to the accident who specifically stated that the driver of the offending school bus was driving the same in a rash and negligent manner, without observing traffic rules, that he suddenly brought

the bus from the middle of the road to the left and applied brakes as a result of which the driver of the Active struck against the bus resulting in her falling down, sustaining injuries and dying, that the statement of PW-2 had gone unrebutted, that PW-2 had recorded the aforementioned facts in the FIR also, besides, mentioned therein that the driver of the bus had stopped the bus at a place where there was no stoppage or parking. In the light of the position as noted above, the learned Tribunal concluded that it was the driver of the offending bus who alone was responsible for causing the accident on account of his negligence and further that the driver of the offending bus had not come forward to explain the manner in which the accident had taken place despite the fact that he was the best person to throw light on the same. In the circumstances, the learned Tribunal concluded that the non-appearance of the driver of the offending vehicle in the witness box without explanation was sufficient to raise an adverse inference against him and to assume that whatever was stated by the claimants was correct while that stated by the respondent was false.

4. The findings recorded by the learned Tribunal leads to the inescapable conclusion that no circumstances exist warranting taking of a view other than what was taken by the learned Tribunal.

5. Accordingly, finding no merit in the appeal, award is upheld and the appeal is dismissed in limine.

(B.S. Walia)
Judge

07.12.2017
amit

Note:

- | | | |
|---|---|---------|
| 1. Whether the order is speaking/reasoned | : | Yes/No. |
| 2. Whether the order is reportable | : | Yes/No. |