

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

1. FAO No.6557 of 2017 (O&M)
Date of decision : 03.10.2017

New India Assurance Company Ltd.

...Appellant

Versus

Nasiban and others

...Respondents

2. FAO No.6558 of 2017 (O&M)
Date of decision : 03.10.2017

New India Assurance Company Ltd.

...Appellant

Versus

Faryad (since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.C. Kapoor, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

By this order, I shall be disposing of two appeals preferred by the Insurance Company arising out of the two claim petitions disposed of by a common judgment.

Learned counsel for the appellant has submitted as under:-

- i) Since it was a case of head on collusion, therefore, the Tribunal ought to have return a finding of composite/contributory negligence.

- ii) Deceased, driver of the motorcycle was a minor on the date of accident.
- iii) The Tribunal has added future prospects which is now being examined by the Larger Bench of the Hon'ble Supreme Court.

I have considered the submissions of the learned counsel for the appellant.

In the present case, the accident took place between the bus and the motorcycle. It is a finding of the Motor Accident Claims Tribunal after appreciating the evidence available on the record that bus was coming from the wrong side. In these circumstances, it is not necessary that in all the cases of head on collision, there must be a contributory/composite negligence.

Second argument of learned counsel is that the deceased, driver of the motorcycle was a minor.

A reading of the award passed by the Motor Accident Claims Tribunal would show that no such point was either raised or discussed by the Tribunal. In the absence of the aforesaid fact, the appellant cannot be permitted to raise the arguments for first time in appeal as such that would always depend upon the evidence produced by the parties. The Motor Accident Claims Tribunal has taken the age of the deceased as 19 years. In these circumstances, I do not find any force in the submission of the learned counsel.

Last submission of learned counsel is that the issue with regard to the payment of the compensation after including future prospects in case of self-employed is pending before the Larger Bench of Hon'ble Supreme

Court. In this regard, he has referred to *SLP No.16735 of 2014* titled as *National Insurance Company Vs. Pushpa and others*.

Keeping in view the fact that the aforesaid issue is pending, both the appeals are dismissed subject to the condition that the Insurance Company would deposit the entire compensation awarded by the Tribunal. However, the Motor Accident Claims Tribunal shall not disburse the amount with regard to the future prospects till the disposal of the matter by the Hon'ble Supreme Court.

Since the order has been passed without issuing any notice to the claimants, hence, claimants shall be entitled to move an application seeking recall of the order.

Appeal dismissed.

03.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No