

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2510 of 2018(O&M)

Date of Decision: 08.05.2018

The New India Assurance Company Ltd.

... Appellant

Versus

Smt. Mamkaur & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. S.S. Sidhu, Advocate,
for the appellant.

RAMENDRA JAIN, J.(Oral)

CM-9337-CII-2018

For the reasons mentioned in the application, the same is allowed. Delay of 17 days in filing the appeal is condoned.

FAO No.2510 of 2018(O&M)

The appellant-Insurance Company has preferred this appeal for modifying the impugned award dated 01.02.2018 of the Motor Accident Claims Tribunal, Panipat, (in short 'the Tribunal'), and holding contributory liability of respondents No.3 and 4.

Put pithily, in the intervening night of 6.6.2015 and 07.06.2015, around 1.00 PM, one Kuldeep died in a motor vehicular accident caused by respondent No.3 while driving canter bearing registration No.HR-55G-5566, owned by respondent No.4 and insured by the appellant. Mother and minor daughter of the deceased Kuldeep filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for award of compensation to them being dependents upon him.

Learned Tribunal after holding trial, vide impugned award dated 15.01.2018 awarded compensation of ₹18,22,000/- along with interest @ 7 %

per annum to the claimants from the date of filing of claim petition till realization.

Learned counsel for the appellant-Insurance Company contends that the deceased Kuldeep while driving his canter had struck against a stationary canter bearing registration No.HR-55G-5566 allegedly parked in the middle of the road, which itself is sufficient to draw an adverse inference against the deceased Kuldeep that he was driving his vehicle in a rash and negligent manner and also in high speed. For that reason, he could not see the static canter from a sufficient distance and struck his vehicle against the offending canter. Learned Tribunal, appreciating this fact, ought to have fixed contributory negligence of the deceased also.

Having given considerable thoughts to the submission made by learned counsel for the appellant, I find that the instant appeal is completely devoid of any merit for the reasons to follow:-

The accident took place on a fly over. The appellant-Insurance Company had not produced the site plan of the accident duly prepared by the investigating agency during investigation on the record to ascertain the fault of the deceased Kuldeep or the stationary canter. According to the pleadings of respondents No.1 and 2-claimant, the offending canter was parked without any signal or indication in the middle of the road. In such a situation, judicial not of the fact can be taken that a static vehicle even in the middle of a bridge on the other side while going down cannot be noticed by a driver of vehicle even from a close distance, while climbing on a bridge in view of the fact that its head lights would through lights towards sky and not in front. In such a situation, there is always a chance of losing control by the driver of a running vehicle on applying sudden brakes to avert the accident. There is unrebutted

evidence led by the claimants that the accident had occurred due to sole negligence of respondent No.3. The appellant-Insurance Company did not bring on record any evidence qua contributory negligence of the deceased Kuldeep. Therefore, after going through the impugned award, I find no illegality or infirmity in the same, rather the same is well reasoned.

In view of discussion made above, the appeal stands dismissed.

08.05.2018
monika

(RAMENDRA JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>