

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

F.A.O. No. 3346 of 2019(O&M)

Date of Decision: 12.07.2019

New India Assurance Company Limited

.....Appellant.

Versus

Laveena @ Alaveena and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Harsh Aggarwal, Advocate
for the appellant-Insurance Company.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company challenging award dated 04.12.2018, passed by the learned Motor Accident Claims Tribunal, Gurdaspur (for short 'Tribunal'), primarily on the grounds that the accident in question took place due to the rash and negligent act of the deceased himself and deduction of 1/ 3rd has been wrongly applied by the learned tribunal, as the deceased was a bachelor.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), husband of Laveena @ Alaveena (respondent no.1 in this appeal) died in the year 2014. He was serving the Railway Department. After the death of her husband, her son namely Prince, got a job from the department and was posted at Amritsar. Prince had to go for his night duty at Amritsar and Laveena @ Alaveena had to go to her relatives at Guraspur on 25.10.2017. Prince asked his mother that he was going to his friend namely Ajay son of Sucha, where one Lovejit Chaudhry,

had come and she should go with Prince at house of Ajay and from that place she may go to Gurdaspur with Lovejit Chaudhry and they would then go to Amritsar. Laveena @ Alaveena, had gone to house of Ajay at Naushahra Maja Singh with her son Prince on motorcycle. Prince, along with his friends namely Ajay and Gurwinder Singh, were proceeding to Dhariwal side on a motorcycle and Laveena @ Alaveena, was following them on a separate motorcycle with Lovejit Singh. Motorcycle bearing registration no. PB-06-AA-9289, was driven by Prince. At about 8.30.p.m., when they reached in front of More Suchania, a truck bearing registration no. RJ-07-GB-1069 was parked in a negligent manner on the main road without any indication and without switching on parking lights. Motorcycle of Prince struck against the truck. As a result thereof, Prince suffered multiple simple and grievous injuries. Ajay and Gurwinder Singh also suffered injuries. They were taken to Civil Hospital, Gurdaspur, where Prince succumbed to his injuries. Postmortem was conducted. FIR, was registered, in this respect. Compensation was sought.

Appellant-Insurance Company as well as respondent-owner of the offending truck, denied the occurrence of the accident altogether.

Considering the income of the deceased to be Rs. 18,500/- per month, while working as a Helper AC/ASR with Northern Railways, Amritsar, learned tribunal awarded a sum of ₹27,33,928/- along with interest @6% per annum from the date of filing of the claim petition till realisation of the amount to the claimants, which is detailed as under:-

1.	Total income of deceased	₹18,500/- p.m.
2.	Deduction	1/ 3 rd
3.	Multiplier	18

4.	Loss of estate	₹15,000/-
5.	Loss of consortium	₹40,000/-
6.	Funeral expenses	₹15,000/-
	Total	₹27,33,928/-

Learned counsel for the appellant-Insurance Company vehemently argues that admittedly the deceased along with two others were proceeded on a motorcycle. It was a case of triple riding, which is impermissible. They dashed into a stationary truck. Therefore, negligence on the part of the deceased is evident on the face of it. There is gross violation of the traffic rules. Therefore, learned tribunal has erred in awarding compensation to the claimants on account of death of Prince.

It is further argued that the deceased was admittedly, a bachelor, aged 25 years. In view of the judgement of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77**, it is a deduction of 50% which should have been effected and not 1/ 3rd. It is thus prayed that the present appeal be allowed and compensation awarded to the claimants be reduced.

I have heard learned counsel for the appellant-Insurance Company and have gone through the file with his assistance.

Learned counsel for the appellant-Insurance Company is unable to deny that as per the evidence on record, the offending truck was standing parked on the main road without any kind of indication regarding its presence. The accident in question took place at 8.30 p.m., on 25.10.2016. Therefore, in this situation, merely because the motorcycle in question struck against the truck from behind, is *per se*, not indicative of negligence on the part of the motorcycle driver in the absence of any positive evidence

to this effect. It has been held by the Hon'ble Supreme Court in the case of **Archit Saini and another versus Oriental Insurance Company Limited and others 2018 (5) RCR (Civil) 80** that merely because a vehicle strikes against a vehicle from behind does not, per se, lead to an inference of contributory negligence on the part of the vehicle coming from behind.

Furthermore, triple riding on the motorcycle, is admittedly a traffic violation. No evidence on record has been led by the respondents to show that triple riding was the causative factor of the accident in question. It is indeed the rash and negligent act of the parking of the truck on the main road which is the cause of the accident in question. Therefore, the finding returned by the learned tribunal on this issue, is correct and is accordingly upheld.

In respect to the argument regarding deduction of 50% on account of personal expenses, it is relevant to note that the Hon'ble Supreme Court in **Sarla Verma's case (Supra)**, has held that deduction other than 50% in the case of a Bachelor can be effected in certain circumstances. In the present case the deceased was admittedly living with his widowed mother and unmarried sister who were dependent upon him. Therefore, there is no infirmity in deduction of 1/3rd instead of 50% being effected in the facts and circumstances of the case.

No other argument has been raised.

Learned counsel for the appellant-Insurance Company is unable to point out any illegality or infirmity in the impugned award dated 04.12.2018, passed by the learned tribunal, Gurdaspur, which calls for interference by this Court, at the instance of the appellants.

There is delay of 10 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Appeal is accordingly dismissed with no order as to costs.

12.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.