

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

FAO No. 3576 of 2017(O&M)

Date of decision: 31.1.2019

Bajaj Allianz General Insurance Co. Ltd.Appellant

VERSUS

Sushma Rani and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sachin Ohri, Advocate for the appellant.

Mr. Sameer S. Tiwari, Advocate for respondents No.4 to 6.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 23.09.2016 passed by the Motor Accidents Claims Tribunal, Panipat (in short 'the Tribunal') whereby compensation has been assessed on account of death of Purushotam Gautam in a motor vehicular accident that took place on 26.01.2012.

The Tribunal has awarded compensation of Rs.9,58,000/- but the claimants have been held entitle to a sum of Rs.4,79,000/- as 50% negligence has been attributed to the deceased, driver of vehicle No.CH01-AB-8997 whereas remaining 50% has been attributed to the alleged offending vehicle Qualis bearing No.HR-38Q-0338 insured with appellant-insurance company.

Notice to respondents No.1 to 3 and 7 could not be issued as counsel for the appellant failed to comply with order dated 10.08.2018. A

relevant extract therefrom reads as follows:-

“Mr. Deepender Singh, Advocate has caused appearance and filed memo of appearance on behalf of respondents No.4 to 6. He prays for time to make submissions.

Notice could not be issued to respondents No.1 to 3 and 7 as counsel for the appellant did not comply with order dated 26.02.2018.

On necessary compliance within three weeks, notice to respondents No.1 to 3 and 7, failing which it may be adverse consequence.

List on 31.01.2019.”

In view of the above, appeal against respondents No.1 to 3 and 7 is ordered to be dismissed.

Counsel for the appellant- insurance company would fairly inform that the appeal has been preferred only to assail quantum of compensation and claimants being not entitle to receive compensation as Purushotam Gautam (since deceased) himself was the tortfeasor for the occurrence. As appeal against the claimants/respondents No.1 to 3 has been dismissed, noticed hereinbefore, it is not open for the insurance company to challenge either quantum of compensation or entitlement of the claimants to get compensation. Even otherwise, I have gone through findings of the Tribunal on issue No.1 whereby 50% negligence has been attributed to Purushotam Gautam and accordingly claimants have been held entitle to compensation to the extent of only 50%, I do not find any reason to interfere in findings of the Tribunal attributing remaining 50% negligence to driver of the offending vehicle who had parked the vehicle in middle of the road without any indicators/reflectors etc.

In view of what has been discussed hereinbefore, the appeal stands dismissed. However, nothing stated hereinbefore shall cause prejudice to the claimants if they file an appeal for enhancement.

JANUARY 31, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no