

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

FAO No. 7231 of 2019 (O&M)

Date of Decision: 6.1.2020

Future Generali India Insurance Company

...Petitioner

Vs.

Seema and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Kundra, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The only substantial argument worth noticing, raised by learned counsel for the appellant in this appeal is an admission of Philip Masih S/o Victor Masih in his cross examination that the accident took place due to the negligence of both the drivers of the vehicles involved in the fatal road accident, i.e. the driver of the Canter (in which the witness and his deceased brother were travelling along with 18 other family members) and the driver of the Tipper Truck. A criminal case for causing death by rash and negligent driving was registered against them in FIR No. 49 dated 01.11.2017 at Police Station, Ghanie Ke Bangar and charges have been framed by the Court of Judicial Magistrate, Ist Class Batala against both the drivers i.e. Harbinder Singh and Govind Singh and the trial is in progress.

2. Accordingly, it is argued that this is a case of contributory

negligence and, therefore, the award of compensation should be scaled down to half.

3. I am not impressed with this argument as a ground for interference for these reasons; Firstly, because the deceased was a passenger and not the driver of the Canter; and Secondly, as a case of contributory negligence, even assuming it to be one, the appellant company can always claim reduction by half of the award and recover it from the insurance company of the Canter and its owners, but that will not have any effect on compensation payable to the legal heirs of the deceased as determined by the Tribunal. The appellant must pay the awarded amount to the claimants and then seek to recover the other half in accordance with law for which liberty is open ended. Nor is any opinion expressed thereon.

4. No other point was pressed or urged.

5. As a result, the appeal fails and is dismissed as there is no merit found in it as against the respondent claimants.

6. Photocopy of the statement of Philip Masih produced by the appellant at the hearing and the order framing criminal charges are retained on record with the identification as Mark 'A' and 'B'.

(RAJIV NARAIN RAINA)
JUDGE

6.1.2020

kv

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