

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

117

FAO No.511 of 2021 (O&M)

Date of decision: 06.07.2021

The New India Assurance Company Ltd.

...Appellant

Versus

Kamla Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Puneet Jain, Advocate for
Mr. MB Jain, Advocate for the appellant.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The insurance company has filed the appeal assailing the judgment passed by the learned Presiding Officer, Motor Accidents Claims Tribunal, Rupnagar on 07.01.2021.

On 23.04.2019 in a motor vehicular accident, late Sh. Satpal lost his life. The Motor Accidents Claims Tribunal (in short 'the Tribunal') has assessed the compensation payable at Rs.15,66,250/-. The insurance company does not dispute the correctness of the method of assessment or the amount of compensation.

Learned counsel representing the insurance company contends

that as per daily dairy report, the accident took place as a stray dog suddenly came on the road and therefore, the driver of the vehicle cannot be said to be negligent. He, hence, contends that the negligence of the driver is not proved. He further contends that the Tribunal has erred while recording finding that respondent No.6 was exclusively negligent although it was proved that the deceased Satpal was not wearing helmet while riding on the pillion of a motorcycle. He, hence, contends that the amount payable by the insurer is liable to be reduced on account of contributory negligence of the deceased.

This Bench has considered the arguments of learned counsel for the appellant and with his able assistance perused the paper-book.

It is apparent that the daily dairy report was entered on the statement of respondent No.6-Gurbax Singh who was, at the relevant time, driving the motorcycle. Gurbax Singh cannot be expected to admit his negligence. The daily dairy report has not been registered either by the claimants or by Shiv Kumar, an eye-witness. In support of the claim petition, Shiv Kumar has appeared before the Court to depose. He has been thoroughly cross examined by putting searching questions. His deposition has been found creditable by the Tribunal. Learned counsel representing the appellant does not dispute the correctness of aforesaid finding. Hence, the first contention is without substance.

With regard to next argument, it may be noted that the insurance

company has neither laid any foundation in the pleadings nor led evidence in support thereof. The insurance company while filing the written statement did not plead that late Sh. Satpal was not wearing the helmet. Still further, the insurance company did not lead any evidence to prove this fact. Learned counsel also failed to raise this point before the Tribunal. Still further, learned counsel for the insurance company has failed to draw the attention of the Court to the cross examination of Shiv Kumar on this aspect. In such circumstances, the argument of learned counsel for the insurance company do not deserve acceptance.

In view of the aforesaid discussion, finding no merit and the appeal is dismissed.

All the pending miscellaneous applications are also disposed of.

06.07.2021
ashok

(ANIL KSHETARPAL)
JUDGE

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