

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

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**FAO No.822 of 2021 (O&M)
Date of Decision: August 23, 2021**

The New India Assurance Company Limited

.....Appellant.

VERSUS

Rameshwar and others

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Sandeep Suri, Advocate
for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

The appellant/insurance company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 17.03.2021 passed by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') granting compensation of Rs.8,62,000/- along with interest @ 6% per annum from the date of petition to the father of deceased Kuldeep.

Perusal of the paper book would go on to show that the accident took place on 09.07.2018 and the FIR was also lodged on the same day. As per the claimant, the deceased died on 12.12.2018 on account of the injuries suffered in the accident.

Mr. Sandeep Suri, Advocate for the appellant contends that the

cause of death of the deceased cannot be said to be the injuries suffered in

the accident, which took place five months earlier and also challenged the said award on account of the fact that the compensation amount awarded was excessive.

Perusal of the paper book would go on to show that the brother of the deceased namely Ajit was the eyewitness of the accident along with one Subhash, who was lodger of the FIR. The defence of Roshan Lal, driver of the offending vehicle was that the deceased, as such, himself was negligent as he had stepped off the divider on the road and therefore, the accident had taken place due to his rash and negligent act. The Tribunal came to the conclusion that it was a case of contributory negligence of the deceased as well and put a cut of 50% on the amount awarded on that account by coming to the conclusion that respondent No.1 (driver of the offending vehicle) should have also been more vigilant and the accident could have been avoided at that time.

The income of the deceased was assessed as minimum @ Rs.8,000/- per month. The deceased being unmarried, 50% of his income was deducted towards his personal expenses. The deceased was 43 years old, as such, multiplier of 14 was applied, taking the compensation to Rs.8,40,000/-, on which 50% cut was imposed on account of contributory negligence. Under the conventional heads, an amount of Rs.15,000/- each was allowed under the heads, loss of estate and funeral expenses. The claimant has also been awarded a sum of Rs.4,12,079/-, which was spent on the treatment of the deceased, as it was the specific case, as such, the deceased had suffered injuries in the accident and was getting treatment. Eventually, he expired after five months and the claim was of

Rs.15,00,000/- on account of the treatment of the deceased.

Perusal of the statement of PW3 Dr. Rohit Kumar Jakhar would go on to show that the deceased was diagnosed with polytrauma/traumatic brain injury/hemothorax/hemoperitoneum/fracture both bones forearm left. It has also come on record through Nishant, Billing Clerk that a sum of Rs.3,20,000/- as such was paid by the computerised bills at Kainos Hospital. Post-mortem report dated 18.12.2018 would go on to show that the deceased was still undergoing treatment on account of the injuries and even had bed sores present on the occipital area and would thus go on to show that the case set up by the claimant that the deceased was undergoing treatment till his death. All of this would rebut the case of the insurance company that the cause of death cannot be said to be on account of the accident in question. In these circumstances, this Court is of the opinion that the Tribunal has awarded just compensation and no case is made out in favour of the appellant.

Accordingly, the present appeal is dismissed in limine.

The amount of Rs.25,000/- deposited by counsel for the appellant, while filing the appeal, be sent to the Executing Court for due adjustment against the awarded amount to be paid by the insurance company.

August 23, 2021

Sachin M.

(G. S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*