

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

Sr. No.124

**FAO-1210-2021 (O&M)  
Date of decision : 24.09.2021**

New India Assurance Company Limited

..... Appellant

VERSUS

Yashpal and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Lalit Garg, Advocate, for the appellant.

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**SUDHIR MITTAL, J. (Oral)**

The insurance company is in appeal against award dated 02.08.2021 passed on claim petition filed by heirs of Indra Rani, who died in a motor vehicle accident on 09.10.2017. The deceased was riding pillion on a Honda Activa, which was being driven rashly and negligently. It was hit from behind by a motor-cyclist and as a result of collision, the person riding the Honda Activa could not control the same. The vehicle fell on road resulting in the death of aforementioned Indra Rani. A total compensation was assessed as Rs.10,64,870/-, but the same has been reduced by 1/3<sup>rd</sup> as the vehicle was being driven by the son.

Learned counsel for the appellant submits that in the FIR registered after the accident, the complainant had mentioned that the motor-cycle was being driven rashly and negligently. There was no statement that the Honda Activa was being driven rashly and negligently. The police could not trace the motor-cycle concerned and an untraced report was submitted, which was accepted by the Court. However, before the learned Tribunal, a case of rash and negligent driving by the driver of Honda Activa has been set up, which is at a complete variance with the original

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case set up. Thus, the Tribunal was in error in returning a finding of rash and negligent driving by the driver of the Honda Activa.

Learned counsel for the appellant was asked to refer to the evidence on record in this regard. He fairly concedes that the FIR and cancellation report have not been placed on record. Under the circumstances, the Tribunal could have decided the issue of rash and negligent driving only on the basis of evidence available before it. No error has been pointed out in evaluation of the evidence available on record. Thus, the contention cannot be accepted.

It is next contended by learned counsel for the appellant that Gulshan Chahotra was examined by the complainant as PW-2 to prove the negligence of the vehicle insured, however, said person was not cited as a witness in the FIR. Thus, no reliance could be placed on his evidence.

This argument is being noticed only for the purpose of being rejected. As mentioned earlier, the FIR is not on record nor so the list of witnesses relied upon therein. Thus, the submission cannot be accepted.

The appeal has no merit and is dismissed.

**(SUDHIR MITTAL)**  
**JUDGE**

**24.09.2021**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No