

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

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FAO-347-2022 (O&M)

Date of decision: 09.02.2022

SHRIRAM GENERAL INSURANCE COMPANY LTD. ..Appellant

Versus

IDRIS AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.
 Mr. Ashish Gupta, Advocate for respondent No.1/caveator.

ANIL KSHETARPAL, J (Oral)

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

The Insurance Company assails the correctness of the award passed by the Motor Accidents Claims Tribunal, Gurugram, on 18.03.2021.

The Tribunal has allowed the claim petition and held respondent No.1-Idris entitled to compensation of Rs.19,21,418/-.

Learned counsel representing the appellant does not dispute the correctness of the findings of the Tribunal with respect to the involvement of the vehicle, rash and negligent driving or the income assessed.

Learned counsel for the appellant contends that since there was head on collision between the two vehicles therefore, the Court must assume that both the drivers of the respective vehicles involved in the accident were contributory negligent. He has time and again read the cross examination of

Idris son of Ismail. He further relies upon the judgment passed by the Hon'ble Supreme Court in **Bijoy Kumar Dugar vs. Bidyadhar Dutta and ors., 2006 (3) SCC 242.**

The relevant part of the statement on which learned counsel for the appellant has laid stress reads as under:-

“I had not reported the matter to the police. My statement is being recorded for the first time today in connection with the said accident case. The width of the road is about 50 feet where the accident took place. It was day time at that time and things were quite visible. The alleged offending vehicle had not stopped and had fled away after causing the accident. There was a head on collision between our vehicle and the front coming vehicle. Both driver sides had collided while crossing the vehicle on the road. There was no intervening vehicles between our and front coming vehicle.”

Learned counsel submits that the two vehicles had collided head on as they were travelling in the opposite direction, the tribunal has wrongly held that this is not a case of contributory negligence.

This Court has considered the submission and carefully read the judgment passed by the Hon'ble Supreme Court in **Bijoy Kumar Dugar (supra)**. From the reading of the part of the statement of Idris, extracted above, it is evident that Idris, the injured, has only admitted that there was a head on collision between the two vehicles. There is no admission that the drivers of both the vehicles were contributory negligent in causing the accident. The claimant was travelling in a car whereas the offending vehicle

was a truck. On appreciation of evidence, the Tribunal has found that respondent No.2 was driving the truck in a rash and negligent manner which resulted in an accident. Idris and Abbas, both the injured, have stepped into the witness box.

In the accident, the driver of the car, Nusrat Ali, lost his precious life. The claim petition filed by his dependent has been allowed. The Insurance Company has already paid the amount.

From the careful reading of the statement, extracted above, this Bench does not find it appropriate to conclude that the drivers of both the vehicles were contributory negligent. The claimant has proved his case while appearing in the witness box. The driver, owner and Insurance Company of the truck have not chosen to lead any evidence. The Tribunal, on appreciation of evidence, has found that Shokin Khan was driving the truck in a rash and negligent manner. Such finding has been arrived at on preponderance of probabilities. In absence of the conclusive evidence, this Court does not find it appropriate to draw inference merely because there was head on collision between the two vehicles coming from opposite side. As regards the judgment **Bijoy Kumar Dugar (supra)**, it may be noted that in the facts of the case, the Hon'ble Supreme Court upheld the finding of the Tribunal with regard to contributory negligence. However, such decision is

on the facts of the case. It would not be appropriate to conclude that as a uniform rule that whenever there is a head on collision, the contributory negligence of the drivers of both the vehicles must be recorded. Hence, no ground to interfere in the impugned award is made out.

Dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

09.02.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE