IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3704-2022(O&M)

Date of decision: October 18, 2022

United India Insurance Company Ltd. …Appellant

Versus

Fauja Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

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HARKESH MANUJA, J.

<u>CM-11319-CII-2022</u>:

This is an application seeking condonation of delay of 20 days in filing the appeal.

For the reasons mentioned in the application which is supported by an affidavit, sufficient cause has been shown for condoning the delay, thus, the same is allowed. Delay of 20 days in filing the appeal is condoned.

<u>MAIN CASE</u>:

1. Present appeal lays challenge to an award dated 28.03.2022 passed by the learned Motor Accident Claim Tribunal, Sangrur (hereinafter referred to as 'Tribunal'), whereby, a sum of Rs.11,72,400/- has been awarded as compensation in favour of claimant No. 2/ respondent No. 2. In case the compensation is not deposited within two months, the same shall accrue the interest @ 7% per annum from the date of filing of petition till its realization.

2. The brief facts, which led to the filing of present appeal are that on the fateful day of 21.01.2020, Harpal Singh (deceased) was going from his village Bharur to Sunam for some domestic work, on his motorcycle bearing registration No. PB-13-AT-3893. At that time, he was also being followed by his brother Kandhar Singh on his motorcycle. At about 7:30 A.M when Harpal Singh reached at drain near Jain colony, one Innova car bearing no. CH-01-AX-3128 being driven by Pargat Singh- Performa respondent no. 3 herein, in a rash and negligent manner, hit against his motorcycle as a consequence thereof, he fell down and received multiple injuries. He was taken to Civil Hospital, Sunam where he was declared as brought dead. In this regard, an FIR No. 18 dated 21.01.2020, u/s 304-A, 279 and 427 IPC was got registered at P.S City Sunam.

3. In the claim petition filed by the claimants/ respondents no 1 & 2 being dependents upon the deceased, learned Tribunal having held that the accident occurred on account of rash and negligent driving of the offending vehicle being driven by Respondent No. 3 herein, awarded compensation in the following manner :-

Sr.No.	**Particulars**	**Amount (Rs.)**
1.	Annual income of deceased	Rs.96,000/-
2.	After deduction of 50%	Rs.48,000/-
3.	Future Prospects @ 40%	Rs.67,200/-
4.	Multiplier of 17 as per age of 30 years	Rs.11,42,400/-
5.	Loss of estate	Rs.15,000/-
6.	Funeral Expenses	Rs.15,000/-
	TOTAL COMPENSATION:	Rs. 11,72,000/-

4. On the other hand, the plea raised by the appellant- Insurance Company as regards contributory negligence of the deceased, besides

driving his motorcycle without helmet was rejected directing appellant to pay compensation as jointly and severally.

5. Present appeal has been filed by the Insurance Company for setting aside the award passed by learned Tribunal, primarily on the issue of liability.

6. Learned Counsel for the appellant/ Insurance Company contends that the presence of alleged eye witness i.e Kandhar Singh at the place of accident is highly doubtful since he is an interested witness being brother of deceased and, therefore, his testimony cannot be believed. He also contends that accident in question is result of head-on-collusion and thus, it is a case of contributory negligence and therefore whole liability can not be fastened upon the appellant- Insurance Company. He further contends that since deceased was not wearing helmet at the time of alleged accident, therefore, it is not only violation of Section 129 of Motor Vehicle Act, 1988, but also strengthens their case of contributory negligence, besides even raising the plea of absence of any documentary proof with respect to employment and income of deceased.

7. Having heard learned counsel for the appellant and gone through the paperbook, I do not find any substance in the arguments raised by the learned counsel for appellant/ Insurance Company. The Learned Tribunal, in my view, has rightly proceeded on the basis of testimony of eye witness (CW-2) and the FIR registered with regard to the accident in question while recording a finding on the point of proof of accident, including the involvement of offending vehicle and the same even being driven in a rash and negligent manner by respondent No. 3 herein, more particularly, in the absence of appellant- Insurance Company having not been able to impeach

the credibility of CW-2 during his cross- examination. Merely because he happens to be the brother of deceased, truthfulness of his testimony cannot be doubted. Learned Tribunal recorded a specific finding to the effect that no evidence had come from the side of Insurance Company that it was the case of contributory negligence, although the burden to prove this plea was upon the Insurance Company which, it has failed to discharge in this case.

8. Furthermore, nothing has been brought to my notice or even produced before me that any such case of contributory negligence or not wearing of helmet, at the time of accident by the deceased was ever put to the eye witness CW-2. Still further, this plea cannot even been corroborated from the contents of FIR, thus, in the absence of any such evidence on record, the findings recorded by the learned Tribunal does not call for any interference.

9. The core question to be decided by learned Tribunal was as to whether the accident in question was caused only due to rash and negligent driving of the offending vehicle and in my view, the said question had been decided correctly by the Tribunal on the touchstone of preponderance of probability.

10. Resultantly, the present appeal is consequently dismissed in limine with no orders as to costs.

11. Pending application(s), if any, shall also stand disposed of.

October 18, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*

SANJAY GUPTA
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I attest to the accuracy and
integrity of this document