

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

212

FAO No.4192 of 2013 (O&M)
Date of Decision : 15.03.2022

The New India Assurance Company Ltd.

.....Appellant

Versus

Anamika Jain @ Anamika Aggarwal and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Padam Kant Dwivedi, Advocate
for respondent nos.1 to 4.

None for respondent no.5.

Alka Sarin, J.

This is an appeal filed by the New India Assurance Company Ltd. against award dated 04.03.2013 passed by Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as the 'Tribunal') whereby compensation of ₹48,00,000/- was allowed to the claimants-respondents no.1 to 4 for death of Dr. Vikas Jain (hereinafter referred to as the 'deceased') in a motor vehicle accident with truck bearing registration No.RJ-09-GA-0189 (hereinafter referred to as the 'offending vehicle').

Learned counsel for the appellant has contended that the present is a clear case of contributory negligence inasmuch as the deceased was coming on to a highway from a link road to go on to another link road. It is further the contention that on joining a highway from a link road it is incumbent on the driver to slow down while approaching a road intersection or a road junction and to give way to the vehicles proceeding along the road. In support of his contention learned counsel for the appellant has relied upon

judgments passed by this Court in ***Rawat Singh & Anr. vs. Sube Singh &***

Ors. [1995 ACJ 679], State of Punjab vs. Roshnai Ram & Ors. [1976 ACJ 506], New India Assurance Co. Ltd. vs. Surinder Kaur & Ors. [1987 ACJ 462] and [Kuldip Singh Kohli vs. Gurmail Singh & Ors. [1985 ACJ 621].

Per contra, learned counsel appearing on behalf of respondent nos.1 to 4 i.e. the claimants has contended that there was no question of contributory negligence in the present case inasmuch as there was no evidence led by the Insurance Company which would in any manner show that there was contributory negligence on the part of the deceased. Learned counsel for the respondent nos.1 to 4 has further relied upon a judgment by the Division Bench of Karnataka High Court in ***Dr. Bhaktaprahlad & Anr. vs. Nirwani & Ors. [2009 (29) RCR (Civil) 846]*** to contend that once a driver of the offending vehicle is not produced by the Insurance Company an adverse inference ought to be drawn. He would further contend that in the present case the driver of the offending vehicle had not been produced by the Insurance Company but had appeared on his own before the Tribunal and had stated in his examination-in-chief that no accident had taken place. There is not a word in the testimony of the driver, who appeared as RW-1, which would point towards contributory negligence on the part of the deceased.

I have heard learned counsel for the parties.

In the present case the claimants being the widow, two minor daughters and mother of the deceased, Dr. Vikas Jain, who was running his own hospital in the name and style of M/s Jain Eye Hospital at Bazar No.2, Ferozepur Cantt., had filed the claim petition. It was stated in the claim petition that the deceased was an Eye Surgeon and at the time of his death he was aged about 39 to 40 years and was earning ₹70,000/- per month. On the

intervening night of 15.12.2011 and 16.12.2011 the deceased along with his

assistant, namely, Parshotam Saini, was returning from Civil Hospital Bagha Purana, District Moga after attending a Free Eye Camp in his own car bearing registration No.PB-05-R-1430 and going towards Ferozepur Cantt. At about 12.15 hours they reached Mahla Chowk Mudki and there a truck bearing registration No.RJ-09-GA-0189 (offending vehicle) came at a high speed from the side of Talwandi without blowing horn, in a rash and negligent manner, and caused the accident with the car of the deceased. The car was dragged to some distance resulting in multiple injuries to the occupants of the car. Some people present at the spot removed the occupants from the car and took them to Guru Gobind Singh Medical College and Hospital, Faridkot. However, Dr. Vikas Jain is stated to have died on the way. His assistant, Parshotam Saini, was admitted in the hospital.

Respondent no.5 herein filed a separate reply stating therein that no accident had taken place and the FIR had wrongly been registered against him and that the postmortem documents and the pictorial diagram had been got prepared in connivance with the officials of the Civil Hospital just to extract money from the answering respondent no.5. The appellant herein filed a separate reply taking various pleas including that no accident took place and that the claim petition was based on false facts. It was further stated that though it is not admitted, however, even if the accident did take place it is a case of negligence on the part of the driver of the car who had come in the middle of the road and lost control over it and struck with some unknown vehicle.

On the basis of pleadings of the parties, the following issues were framed :

- (1) Whether the claimants are the legal heirs of Dr. Vikas Jain ? OPP

- (ii) Whether the Dr. Vikas Jain had died due to the injuries with the truck driven by respondent no.1 ? OPP
- (iii) Whether the claimants are entitled to the compensation, if so, at what amount and from whom ? OPP
- (iv) Relief.

In support of their claim the claimants examined Anamika Jain as AW-1, Parshotam Saini as AW-2, Shiv Kumar Golyan as AW-3 and Anil Kataria as AW-4.

Respondent no.5 herein appeared himself as RW-1. On behalf of the appellant-Insurance Company, copy of the insurance policy of the offending vehicle was tendered into evidence as Ex.R-6.

On the basis of the pleadings of the parties and the evidence on the record the Tribunal came to a conclusion that the claimants were entitled to an award of compensation of ₹48,00,000/- payable by the appellant herein.

Learned counsel for the appellant has vehemently contended that the present was a case of contributory negligence inasmuch as the driver had approached the highway from the link road and he was duty bound to take all precautions at the time of making an entry on to the highway. In support of his contention, learned counsel for the appellant has relied upon judgments of this Court in **Rawat Singh's case** (*supra*), **Roshnai Ram's case** (*supra*), **Surinder Kaur's case** (*supra*) and **Kuldip Singh Kohli's case** (*supra*). Learned counsel for the appellant has further referred to the cross-examination of AW-2 Parshotam Saini, assistant of the deceased, who was also an occupant of the car at the time of accident, to contend that it has specifically been stated by the said witness that before the accident they

Much mileage has been sought to be gained on the basis of the cross-examination of AW-2.

A perusal of the statement of AW-2 reveals that it has simply been said that before the accident the deceased and AW-2 were plying on a link road and the accident took place on the highway. It has further been stated that before they could reach the next link road to Ferozepur, the accident with the truck took place on the highway. There is no other evidence which has come on the record which would show the exact location where the accident took place. The appellant, in order to substantiate its plea, had not led an iota of evidence which would show that the accident took place as the deceased was exiting the link road and entering the highway. In fact nothing is discernible from the entire evidence which would indicate any negligence on the part of the deceased. The reliance by learned counsel for the appellant on the judgments of this Court in *Rawat Singh's case (supra)*, *Roshnai Ram's case (supra)*, *Surinder Kaur's case (supra)* and *Kuldip Singh Kohli's case (supra)* would also be of no avail. In the case of *Rawat Singh (supra)* the accident had taken place at the intersection itself and in the present case there is nothing forthcoming which could even remotely indicate that the accident took place just at the intersection. *Roshnai Ram's case (supra)* would also not be of any help to learned counsel for the appellant since there was enough evidence in the said case that the driver of the car had come on to the main road and was entering from a by-lane on to the main road and was expected to respect his right opening. To the similar effect is the judgment in *Surinder Kaur's case (supra)*.

The driver of the offending vehicle in the present case has

nowhere stated that there was any negligence on the part of the deceased

while approaching the highway. In fact the categoric stand taken by driver of the offending vehicle was that no accident had taken place.

In view of the fact that driver of the offending vehicle was the only person who could have deposed regarding any negligence on the part of the deceased and he has chosen to keep quiet and rather denied the entire accident, the argument raised by the learned counsel for the appellant cannot be accepted. No other evidence has been pointed out from the record which would even remotely show that the accident took place at the intersection.

In view of above, the present appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed of.

Dismissed.

**(ALKA SARIN)
JUDGE**

15th March, 2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO