

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

FAO-2264-2023 (O&M)

Date of Decision : May 05, 2023

Reliance General Insurance Company Limited

.. Appellant

Versus

Gurdev Kuar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachin Ohri, Advocate, for the appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8292-CII-2023

Present application has been filed for condonation of delay of 08 days in re-filing the appeal.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the application is allowed and delay of 08 days in re-filing the appeal is condoned.

FAO-2264-2023

1. In the present first appeal, the challenge is to the order passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar. By the said Award, a sum of Rs.74.52 lacs has been awarded in favour of the claimants.

2. Learned counsel for the appellant submits that in the present case, the deceased himself was negligent in driving as he had just turned the motorcycle while driving without giving any indication, which factor had led to the occurrence of the accident.

3. On being asked to point out the evidence which had come on record to support that the deceased was negligent during the accident and not the driver of the offending vehicle, learned counsel for the appellant has not been able to point out any evidence to the said effect. In the absence of any evidence to show that any acts on the part of the deceased led to the accident, the argument that the accident was the result of contributory negligence, cannot be accepted.

4. The second argument which is being raised by the learned counsel for the appellant is that the deceased was not wearing the helmet at the time of the accident. Again, learned counsel for the appellant was requested to point out the evidence which has come on record that the appellant was not wearing the helmet at the time of accident. Learned counsel for the appellant submits that from the report of the doctor, it can be inferred that the deceased was not wearing the helmet. The said argument is raised only on the basis of assumption and not on the basis of the concrete fact or on the basis of any evidence on record. An argument being raised on the basis of assumption, cannot be accepted. Hence, in the absence of any concrete finding of fact recorded by the Court below that the deceased was not wearing the helmet at the time of accident, argument being raised cannot be accepted and is actually rejected.

5. Another argument which has been raised by the counsel for the appellant is that the income of the deceased-claimant has not been assessed

correctly as even the allowance which were being given has been taken into account. On being asked to show the basis for raising the said argument and to point out the evidence that any allowances being extended to the deceased were of such nature that the same could not be treated as part of the income, learned counsel for the appellant submits that the phone allowance has been taken into account while calculating the salary. Some of the allowances are related to the duty being executed by an employee. Once the said benefits are extended, which are necessary to perform the duties, they might have been termed as allowances but are to be treated as part of the income for all intents and purposes and the said allowances need not be deducted from the salary of the deceased while assessing his income.

6. Keeping in view the above, no ground is made out for interference by this Court in the first appeal as no perversity in the findings of the Tribunal could be pointed out.

7. Dismissed.

8. Learned counsel for the appellant submits that amount of Rs.25,000/- deposited while filing the appeal be sent to the Tribunal for further disbursement to the claimants.

9. Ordered accordingly.

CM-8293-CII-2023

As the main appeal has been dismissed, present application also stands dismissed.

May 05, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No