

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.125

Case No. : FAO No.801 of 2023 (O&M)

Date of Decision : September 12, 2023

National Insurance Company Limited Appellant
vs.
Smt. Rekha and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Kapil Kumar Gupta, Advocate
for the appellant.

Mr. Digvijay, Advocate
for Mr. Ashish Gupta, Advocate
for respondents no.1 to 6/Caveators.

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GURBIR SINGH, J. :

1. CM No.3124-C-II of 2023 : This is application under Section 5 of the Limitation Act, 1963 for condonation of delay of 78 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 78 days in filing the present appeal is condoned. The application stands disposed of.
2. CM No.3123-C-II of 2023 : This is application under Section 151 CPC for condonation of delay of 133 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 133 days in re-filing the present appeal is condoned. The application stands disposed of.
3. Main Appeal : This appeal has been filed against Award dated

07.02.2022, passed by learned Motor Accident Claims Tribunal, Nuh (for brevity - learned Tribunal). The learned Tribunal, on the basis of evidence recorded in the case, came to the conclusion that Dharmveer died in the motor vehicular accident caused by respondent no.7 - Harish Chand, while driving vehicle bearing registration No.UP-85-AU-8173 in a rash and negligent manner. Respondent no.1 being widow of deceased Dharmveer, respondents no.2 to 5 being minor children and respondent no.6 being his mother were dependent upon him, who was 28 years old at the time of his death and was proved to be working as a labourer. His income was assessed as Rs.7614/- per month i.e. wages of an unskilled worker at that time. Keeping in view the fact that there were six dependents, 1/4th of his income was ordered to be deducted as personal expenses. 40% of his income was added as future prospects. Multiplier of 17 was adopted. A sum of Rs.16,500/- each was granted as loss of estate and funeral expenses. A sum of Rs.2,64,000/- was granted as loss of consortium. Total compensation of Rs.19,27,980/- was awarded. The driver, owner and Insurance Company were held liable to pay the amount of compensation jointly and severally.

4. Learned counsel for the appellant has argued that in the application of complainant (Ex.P-2) and in the FIR (Ex.P-1), number of the offending vehicle was written as UP-85-AU-8573 but later on, the claimants, in collusion with the owner, driver and police authorities, impleaded the offending vehicle as UP-85-AU-8173 instead of UP-85-AU-8573, since this vehicle was having insurance policy and earlier one was not having any insurance policy. It has also been submitted that the presence of PW-1

Rekha at the place of accident is not proved. Learned Tribunal has relied upon statement of PW-2 Ranjeet, the alleged eye-witness but he was an interested witness as he was known to the deceased. Had he been present there, then he would have got the FIR lodged. Learned counsel for the appellant has further argued that as per the mechanical report of the offending vehicle No.UP-85-AU-8573, everything was working and there was no sign of any collision which proved that the said vehicle was not involved in the accident. Therefore, the appeal deserves to be allowed.

5. Heard.

6. The claimants examined PW-2 Ranjeet, who duly proved that accident was caused by rash and negligent driving of the vehicle bearing registration No.UP-85-AU-8173. The police also conducted the investigation and submitted report Ex.P-9 stating that the accident was caused due to rash and negligent driving of the vehicle in question. The respondents did not lead any evidence. The evidence recorded before the learned Tribunal is to be seen and it is not the case of the appellant that the police submitted the challan against some other motorcycle and not against motorcycle bearing No.UP-85-AU-8173. Even if there was some mistake in the original complaint made to the police regarding one or two digits or numbers, that has hardly any effect.

7. The proceedings before the learned Tribunal are civil in nature and facts have been proved on the basis of preponderance of probability. The learned Tribunal has correctly held that the accident was caused by rash and negligent driving of motorcyle bearing No.UP-85-AU-8173. There is

no ground to interfere in the lawful order passed by the learned Tribunal.
The appeal is without any merit and is therefore, dismissed.

8. Pending applications, if any, shall stand disposed of along with this judgment.

September 12, 2023 (GURBIR SINGH)
monika JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.