

2024:PHHC:163026



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

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FAO-988-2024 (O&M)

Date of Decision : 05.12.2024

THE NEW INDIA ASSURANCE COMPANY LTD.

.... Appellant

VERSUS

JUHI KUMARI AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parunjeet Singh, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award dated 19.07.2023 passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal').
2. The present appeal has been filed along with an application being **CM-3882-CII-2024** under Section 5 of the Limitation Act, 1963 for condonation of delay of 118 days in filing the appeal. The application itself is totally bereft of any details or any cogent reasons as to why a delay of 118 days had occurred in filing the appeal. On merits, learned counsel for the appellant-Insurance Company would contend that it was a case of contributory negligence as the deceased hit his Canter bearing registration No.HR-69-C-9226 into the Tralla bearing registration No.HR-67-C-8983 which was parked on the road. It is further the contention that there was no eyewitness and since the Canter had hit the Tralla, it was a clear case of a contributory negligence.

3. Heard.

4. In the present case the appeal itself had been filed along with an application for condonation of delay of 118 days for which delay no cogent reasons are forthcoming. On merits, the argument of the learned counsel for the appellant-Insurance Company that it was a clear case of contributory negligence deserves to be rejected. The facts as culled out by the Tribunal are that the claimants preferred the claim petition asserting therein that on 12.02.2022 at about 6:00 am while the deceased was driving his Canter bearing registration No.HR-69-C-9226 at a moderate speed and was observing all the traffic rules, when he reached near Hasanpur Flyover turn, GT Road, Sonipat a Tralla bearing registration No.HR-67-C-8983 was parked on the road without any parking lights, indicators, reflectors or safety measures in the dark. The deceased applied emergency brakes to avoid the collision, however, he could not succeed due to which the Canter struck against the Tralla. FIR No.63 dated 12.02.2022 under Sections 283 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Murthal, Sonipat. The argument of the learned counsel for the appellant-Insurance Company that it was a case of contributory negligence cannot be accepted on the ground that the driver of the Tralla, who would have been the best person to depose as to whether the Tralla was parked properly, chose not to step into the witness box. It is not the case of the appellant-Insurance Company that in early February at 6:00 am it was broad day light. No evidence has been led by the appellant-Insurance Company to even remotely suggest that Tralla was parked in a proper manner. Though the case put forward by the appellant-Insurance

Company was that the vehicle had broken down and that the parking lights, indicators and reflectors had been switched on, however, there was no mechanical report which was placed on the record to suggest that the vehicle had broken down. Infact, no evidence was led by the appellant-Insurance Company even qua the fact that the reflectors and parking signals were switched on. In the absence of any such evidence, no fault can be found with the impugned award passed by the Tribunal concerned. Even on the question of limitation there is no cogent reason coming forward for the delay in filing the appeal.

5. In view of the above, I find no merit in the present appeal. The appeal, being devoid of any merit as well as on the ground of limitation, is dismissed. Pending applications, if any, also stand disposed off.

05.12.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No