

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****126****FAO-1093-2024 (O&M)****Date of Decision : 18.12.2024**

Cholamandalam MS General Insurance Co. Ltd.

....Appellant

VERSUS

Jyoti and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral)**CM-4349-CII-2024**

1. This is an application for condonation of delay of 24 days in filing the present appeal.

2. For the reasons stated in the application, the same is allowed. The delay of 24 days in filing the present appeal is condoned.

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3. Present appeal has been preferred by the Insurance Company challenging the award dated 09.11.2023 passed by the Motor Accident Claims Tribunal, Kapurthala on the ground of false implication of the vehicle bearing registration No.PB-08-EL-2967.

4. The brief facts relevant to the present *lis* are that on 28.07.2020, deceased-Jaspal Singh alongwith Santokh Singh residents of Bhagatpura Sultanpur Lodhi were riding on Activa bearing registration No.PB-09-AD-6233, rider of which was Santokh Singh and the deceased was a pillion rider. It was further the case set up by the claimants (respondent Nos.1 to 4 herein) that father of the deceased, namely, Bhajan Singh was also following them

on his motorcycle bearing registration No.PB-09-R-3587. When they reached near Sakhupur Gate, PS City, Kapurthala, suddenly a vehicle bearing registration No.PB-08-EL-2967, which was being driving by Soni (respondent No.5 herein), came from behind at a high speed and in a rash and negligent manner and hit the Activa from behind as a result of which the Activa went out of control and both Santokh Singh and Jaspal Singh fell on the road. A turbine, which was coming from behind, attached with a cutter trolley crushed Jaspal Singh, who had fallen on the road and injured Santokh Singh. Both the victims were taken to Civil Hospital, Kapurthala where Jaspal Singh was declared dead. It was stated that the accident took place due to rash and negligent driving of the vehicle bearing registration No.PB-08-EL-2967. FIR No.238 dated 28.07.2020 under Sections 279, 304-A, 337, 338 and 427 of the Indian Penal Code, 1860 was registered at Police Station City, District Kapurthala. The claim petition was contested by the driver and owner of the offending vehicle i.e. respondent Nos.5 and 6 herein by filing a written statement raising various preliminary objections. It was stated that the claim petition was not maintainable as it was the admitted fact that the deceased was crushed by a turbine and that the claim petition was bad for mis-joinder of necessary party. Insurance Company also filed its written statement raising various preliminary objections qua the maintainability and the fact that the driver was not holding a valid driving licence and there was breach of insurance policy.

5. On the basis of pleadings of the parties the following issues were framed :

1. Whether Jaspal Singh had died in a Motor Vehicle Accident which took place on 28.07.2020 with vehicle bearing registration No.PB-08-EL-2967, so driven by respondent No.1 Soni, in a rash and negligent manner ?

OPA

2. Whether the claimants are entitled to the compensation ? If so to what amount and from whom ?

OPA

3. Whether the present claim petition is not maintainable ? OPR-1, 2, 3

4. Whether the claimants have come to this court with clean hands ? OPR-1, 2, 3

5. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties ? OPR-1,2, 3

6. Whether the claimants are estopped by their own act and conduct, omission and commission to file present petition ? OPR-1, 2

7. Whether respondent No.1 was not holding a valid and effective driving license at the time of the accident ? OPR-3

8. Whether the offending vehicle was being plied without all the necessary documents at the time of the accident ? OPR-3

9. Relief.

6. The Tribunal, holding that the driver of the vehicle bearing registration No. PB-08-EL-2967 was driving it in a rash and negligent manner, awarded Rs.14,74,800/- as compensation. Aggrieved by the same, the present appeal has been preferred.

7. Learned counsel for the appellant would contend that in the FIR it was simply mentioned that the deceased was being followed by his father

on a motorcycle. It is further the contention that it was nowhere stated that Manpreet was riding the motorcycle with his father and hence the version put forth by the claimants was unbelievable.

8. Heard.

9. In the present case, Manpreet, brother of the deceased, had stepped into the witness-box as CW-2 and tendered his affidavit in examination-in-chief as Ex.CW-2/A wherein the entire version regarding the manner in which the accident took place was reiterated. The said witness was cross-examined at length. Not even a suggestion was put to the said witness that the manner as narrated by the witness in which the accident took place was incorrect. In the absence of any suggestion having been put to the said witness and no evidence having been led to the contrary, the argument of learned counsel for the appellant cannot be accepted.

10. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.12.2024

jk

(ALKA SARIN)
JUDGE

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