



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

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**FAO-1746-2024 (O&M)
Date of Decision : 24.09.2024**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

VERSUS

ANURADHA AND OTHERS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Armaan Gagneja, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-Insurance Company challenging the award dated 05.01.2024 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'the Tribunal').
2. Brief facts relevant to the present *lis* are that on 25.07.2022 the deceased, namely, Dharamvir was going to his in-law's house at Village Bajrur on his motorcycle while driving the same with proper care and caution by observing traffic rules. His brother was following him on a separate Activa and at about 10:30 p.m. when the deceased reached near Rana Hospital, Nurpur Bedi, a tipper bearing registration No.PB-65-P-9541 (hereinafter referred to as 'the offending vehicle') was parked on the road without any parking lights, reflectors and indicators. The deceased could not see the said tipper at night and struck the same from behind. The brother-in-law of the deceased reached there and took him out and an ambulance was

called and the deceased was taken to Civil Hospital, Singhpur. However, Dharamvir (since deceased) was declared brought dead at the hospital. FIR No.89 dated 26.07.2022 under Sections 283, 304-A and 427 of the Indian Penal Code, 1860 was registered at Police Station Nurpur Bedi on the statement of Vijay Kumar. Hence, the claim petition. On notice respondent No.6 herein i.e. the driver of the offending vehicle appeared and filed written statement raising objections on the ground of maintainability and concealment of facts. It was stated that the offending vehicle was not driven by respondent No.6 herein. It was further pleaded that the offending vehicle had valid insurance and permit. Respondent No.7 herein i.e. the owner of the offending vehicle also appeared and filed a separate written statement denying the averments made in the claim petition. The Insurance Company (appellant herein) also filed a separate written statement raising various preliminary objections. It was pleaded that the claimants in collusion with the Police have registered a false FIR and that the offending vehicle was falsely involved in the case. It was further the plea that the driver of the offending vehicle was not holding a valid driving licence.

3. From the pleadings of the parties, the following issues were framed :

1. Whether the deceased Dharamvir son of Gurdeep Kumar died in the motor vehicle accident that took place on 25.07.2022 at about 10:30 p.m. in the area near Rana Hospital, Nurpur Bedi, Tehsil Anandpur Sahib, District Rupnagar, due to negligent parking

of tipper bearing registration No.PB-65-P-9541 by respondent No.1 on the road without parking lights, reflectors and indicators ? OPP

2. If the above issue is proved, whether the claimants are entitled for compensation, as prayed for ? OPP
3. Whether respondent No.1 was not having valid documents i.e. driving licence etc. at the time of the accident ? OPR
4. Whether the present claim petition is not maintainable ? OPR
5. Relief.

4. The Tribunal vide the impugned award dated 05.01.2024 held that the offending vehicle was parked in a negligent manner and hence awarded compensation to the tune of ₹18,80,564 (rupees eighteen lakh eighty thousand five hundred sixty four) to claimant-respondents No.1 to 5. Aggrieved by the same the present appeal has been preferred by the appellant-Insurance Company.

5. Learned counsel for the appellant-Insurance Company would contend that the offending vehicle was not at fault. Learned counsel would further contend that in a similar case being **Raj Rani V/s Oriental Insurance Company Limited [(2009) 5 SCC (Civil) 232]** it has been held by the Hon'ble Supreme Court that it was a case of contributory negligence and that the present is also a case of contributory negligence.

6. Heard.

7. In the present case it has come in the evidence of the eye-witness that the offending vehicle i.e. tipper bearing registration No.PB-65-P-9541 was parked on the road without any parking lights, reflectors and indicators. The accident took place at about 10:30 p.m. The claimant-respondents No.1 to 5 led sufficient evidence to show that the tipper was wrongly parked without any reflectors or parking lights. No evidence was led by the driver or the owner (respondents No.6 and 7 herein) or the appellant-Insurance Company to the contrary. Reliance of the learned counsel for the appellant-Insurance Company on the case of **Raj Rani** (supra) would be of no aid to him inasmuch as in the said case neither the time of the accident is apparent nor is it forthcoming as to whether the driver and owner had stepped into the witness box to lead any evidence to the contrary. In the present case on the issue of negligence the appellant-Insurance Company as well as the driver and the owner of the offending vehicle failed to lead any evidence to the contrary. In the absence of any evidence having been led by the appellant-Insurance Company or the driver or the owner of the offending vehicle, no fault can be found with the findings returned by the Tribunal concerned.

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

24.09.2024
Aman Jain

(ALKA SARIN)
JUDGE

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