



116-2

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO-2287-2024 (O&M)****Date of Decision : 29.08.2024**

Shriram General Insurance Company Limited

... Appellant(s)

Versus

Bandana & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjeev Kodan, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-8541-CII-2024**

1. This is an application for condonation of delay of 218 days in filing the appeal.
2. For the reasons stated in the application, delay of 218 days in filing the appeal is condoned. CM stands disposed off.

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3. The present appeal has been filed by the appellant-Insurance Company challenging the award dated 04.07.2023 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'Tribunal').
4. Brief facts relevant to the present *lis* are that on 29.01.2022 Rajesh Kumar - deceased - alongwith one Sunil Kumar resident of Ward No.4, Mohalla Atariwala, Anandpur Sahib was going from Sri Anandpur Sahib to his shop situated at Jhajj Chowk on his motorcycle bearing Registration No.PB-12-X-1638. The said motorcycle was being driven by Rajesh Kumar with proper care and caution and on the left side of the road and Sunil Kumar was riding pillion on the motorcycle. The motorcycle was

being followed by Hari Lal Ravidass who was also going from Sri Anandpur Sahib to village Bhanam for his personal work on a separate motorcycle bearing registration No.PB-16-C-5868. When they reached near T-Point in the area of village Garran at about 8:50 AM, a Tractor alongwith a trolley bearing Registration No.PB-12-Q-4128 (hereinafter referred to as 'offending vehicle') came from Jhajj side and the driver of the tractor, while driving it rashly and negligently, hit the motorcycle of the deceased by coming on to the wrong side of the road from front side as a result of which Rajesh Kumar alongwith Sunil Kumar fell on the road and received multiple and grievous injuries. Rajesh Kumar succumbed to his injuries. On the statement of the witness, namely, Hari Lal Ravidass, an FIR bearing No.13 dated 29.01.2021 under Sections 279, 304-A and 427 of the Indian Penal Code, 1860 was registered at Police Station Anandpur Sahib. The claim petition has been filed by the spouse, children and parents of the deceased, Rajesh Kumar. On notice, respondent Nos.6 and 7 i.e. driver and owner of the offending vehicle filed their written statement raising various preliminary objections. It was denied that any accident took place with the offending vehicle. It was further averred in the written statement that they have falsely been implicated in the case. The Insurance Company (appellant herein) also filed its written statement raising various preliminary objections and that the case had been filed in connivance with respondent Nos.6 and 7. It was further averred in the written statement that respondent No.6 (driver of the offending vehicle) was not holding a valid and effective Driving Licence and there was no valid registration certificate, fitness certificate and insurance. Even the factum of the accident was denied. On the basis of the pleadings, the following issues

were framed :

1. Whether death of Rajesh Kumar son of Krishandev Mandal @ Kashndev Mandal was caused in a motor vehicle accident, occurred on 29.01.2022 due to rash and negligent driving of Tractor-Trolley bearing registration No.PB-12-Q-4128 by its driver respondent No.1 Inder Paul Singh ? OPP
2. Whether the claimant/petitioners are entitled to get compensation on account of death of Rajesh Kumar in motor vehicle accident occurred on 29.01.2022, if so, from whom and to what extent ? OPP
3. Whether the claim petition filed by claimant/petitioners is not maintainable in the present form ? OPR
4. Whether the respondent No.1 driver of the offending vehicle was not holding valid and effective driving license at the time of alleged accident, if so its effect ? OPR-3
5. Whether offending vehicle was not having valid fitness certificate and valid route permit at the time of alleged accident, if so its effect ? OPR-3
6. Relief.

5. The Tribunal vide award dated 04.07.2023 found that the offending vehicle was being driven rashly and negligently and awarded the following compensation :

Sr. No.	Heads of Claim	Amount
1	Total Annual Income	₹3,52,700/-
2	Future prospects (@ 40%)	₹3,52,700/-+₹1,41,080/- =₹4,93,780/-
3	Total annual income after deducting income tax.	₹4,93,780/- - ₹12,189/- =₹4,81,591/-
4	Deduction 1/4th	₹4,81,591/- - ₹1,20,397/- =₹3,61,194/-
5.	Multiplicand (annualized)	₹3,61,194/-
6.	Multiplier (17)	₹3,61,194/- x 17 = ₹61,40,298/-
	Loss of spousal consortium to claimant No.1.	₹44,000/-
8.	Loss of filial consortium to claimants No.2&3	₹88,000/-
9.	Loss of parental consortium to claimant No. 4 &5	₹88,000/-
10.	Loss of estate	₹16,500/-
11.	Funeral expenses	₹16,500/-
	Total	₹63,93,298/-
	Interest	7.5% per annum

6. Aggrieved by the same, the present appeal has been preferred by the appellant-Insurance Company.

7. The sole argument raised by the learned counsel for the appellant-Insurance Company is that in the FIR, the eyewitness i.e. Hari Lal Ravidass had specifically stated that the accident occurred due to the negligence of the driver of a Sonalika Tractor blue in colour. However, later on the vehicle was substituted and a Mahindra Tractor bearing Registration No.PB-12-Q-4128 red in colour was introduced in the present case. The learned counsel would further contend that the cross-examination of PW2- Hari Lal Ravidass also casts a doubt regarding the genuineness of the case.

8. I have heard the learned counsel for the appellant-Insurance Company.

9. In the present case, the only argument raised by the learned counsel for the appellant-Insurance Company is that initially it was mentioned that the tractor was a Sonalika Tractor blue in colour, however, later on it was stated that it was a Mahindra Tractor red in colour bearing Registration No.PB-12-Q-4128. The learned counsel for the appellant-Insurance Company on a query put by the Court as to whether a criminal case is pending against the driver of the offending vehicle (respondent No.6 herein) has conceded that the driver of the offending vehicle is facing trial in the present case and that the eyewitness has also stepped into the witness box though it is stated that his examination is not yet completed. Merely because it is stated in the FIR that it was a Sonalika Tractor blue in colour and later on details of the tractor were mentioned as a Mahindra Tractor red in colour bearing Registration No.PB-12-Q-4128 would not cast any doubt on the genuineness of the present case. Admittedly the driver of the offending vehicle (respondent No.6 herein) is facing trial. Infact, no issue was pressed by the appellant-Insurance Company that the offending vehicle had falsely been implicated in the case.

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

29.08.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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