

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****FAO-3948-2024 (O&M)****Date of Decision : 14.11.2024**

New India Assurance Co. Ltd.

....Appellant

VERSUS

Rajbala and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satpal Dhamija, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-14450-CII-2024**

1. This is an application for condonation of delay of 51 days in re-filing the present appeal.

2. For the reasons stated in the application, the same is allowed.
The delay of 51 days in re-filing the present appeal is condoned.

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3. This is an application for condonation of delay of 76 days in filing the present appeal.

4. For the reasons stated in the application, the same is allowed.
The delay of 76 days in filing the present appeal is condoned.

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5. Present appeal has been preferred by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal').

6. Learned counsel for the appellant would contend that the income of the deceased – Vikas – has been assessed on the basis of a document (Ex.P-10) i.e. ledger account statement depicting the salary of the deceased, which is a forged and fabricated document. It is further the contention that this is a clear case of contributory negligence as the deceased had hit the offending vehicle from the back.

7. Heard.

8. Firstly, dealing with the argument of learned counsel for the appellant that it is a case of contributory negligence. The offending vehicle in the present case was parked on the highway in a negligent manner and without any signage or any indication. The accident took place at 04.30 am. When a vehicle is parked negligently on the highway without any signage or indication the same would not be visible to other vehicles because of the lack of any lighting on the highways. In view thereof, since it is a clear case of negligence on the part of the offending vehicle, the argument of learned counsel for the appellant cannot be accepted. Further still, learned counsel of the appellant has been unable to point out to any evidence on the record to even remotely suggest that any precaution was taken by the offending vehicle while being parked on the highway. The second argument of learned counsel for the appellant is that the salary of the deceased has wrongly been assessed. PW-3 Mukesh Kumar, with whom the deceased was employed, stepped into the witness-box and testified that the deceased was working as a driver and was earning Rs.16,000/- per month. The bank account passbook of the deceased was also tendered in evidence. Despite cross-examination

nothing could be elicited that the said documents depicting the salary of the deceased were forged and fabricated. There is no other evidence, which has been led by the Insurance Company, to even remotely suggest that the documents produced to show the salary of the deceased were forged and fabricated in any manner.

9. 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.

14.11.2024
jk

(ALKA SARIN)
JUDGE

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