

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****113****FAO No.4743 of 2023 (O&M)****Reserved on : 13.05.2024****Date of Decision : 20.05.2024**

Royal Sundaram General Insurance Company Ltd.

....Appellant

VERSUS

Asha and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parvez Chugh, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the Insurance Company aggrieved by the award dated 28.02.2023 whereby the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as the 'Tribunal') awarded compensation to the tune of Rs.37,08,534/- alongwith simple interest rate @ 9% per annum from the date of filing of the claim petition till realization.

2. Learned counsel for the appellant would contend that since there was no eye-witness to the accident who was examined, hence the claim petition ought to have been dismissed. Learned counsel for the appellant would further contend that in the absence of an eye-witness it could not be said that the accident took place because of the rash and negligent driving of the driver of the Breeza Car bearing registration No.HR-30-R-4914 (hereinafter referred to as the 'offending vehicle'). It is further the contention that the age of the deceased as per his wife was 40 years, however, the age has been assessed as 22 years.



3. Heard.

4. In the present case the accident is stated to have taken place on 06.01.2019 when Mukesh (hereinafter referred to as the 'deceased') was coming back from Gurugram to his village Dholagarh on his motorcycle bearing registration No.HR-30-T-3241. His father Dharambir, who was also riding a separate motorcycle, was behind him as both of them worked at Gurugram. When they reached near KMP Road village Rajolaka, the driver of the offending vehicle came from behind and hit the motorcycle of the deceased who fell and received grievous and fatal injuries. The deceased was taken to Government Hospital, Palwal from where he was referred to Safdarjung Hospital. The deceased succumbed to his injuries on his way to Sardarjung Hospital. It has come on the record that the father of the deceased, who is the complainant as well as the eye-witness, could not be examined as he expired after the unfortunate accident. His death certificate was placed on the record as Ex.P3. Merely because the eye-witness was not examined would not be a ground to dismiss the claim petition. In the present case the driver of the offending vehicle is facing a criminal trial. Further still, the offending vehicle itself was recovered from the spot of the accident in a damaged condition and as per the site plan in the final report the offending vehicle collided with the motorcycle of the deceased from the rear side. The very fact that the offending vehicle hit the motorcycle from behind leaves no manner of doubt that it was being driven in a rash and negligent manner. In view thereof, the argument of learned counsel for the appellant that the claim petition ought to have been dismissed for non-examination of the eye-witness stands rejected.



5. The second argument of learned counsel for the appellant that age of the deceased has wrongly been assessed as 22 years inasmuch as his wife had stated that he was 40 years old also deserves to be rejected. As per the Aadhaar Card of the deceased (Ex.P8) his date of birth was reflected as 16.01.1998. Learned counsel for the appellant has also candidly admitted that even in the postmortem report the age of the deceased has been shown to be 22 years. In view thereof, no fault can be found with the age as assessed by the Tribunal.

6. In view of the above there is no merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.05.2024
jk

(ALKA SARIN)
JUDGE

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