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

FAO-4941-2024 (O&M)

Date of Decision : 22.10.2024

New India Assurance Co. Ltd.

... Appellant(s)

Versus

Santosh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral)

CM-18618-CIL-2024

1. This is an application for condonation of delay of 44 days in filing the appeal.

2. For the reasons stated in the application, delay of 44 days in filing the appeal is condoned. CM stands disposed off.

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3. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'Tribunal') dated 07.05.2024.

4. Brief facts relevant to the present *lis* are that on 08.11.2017 the deceased - Satender - was going to his workplace while travelling in a bus bearing Registration No.HR-63-C-2881 and he was occupying a seat behind the seat of the bus driver. It was a foggy day and the driver was driving the bus at a moderate speed and as per the traffic rules. At about 8.00/8.15 am, when the bus crossed Jawahar Lal Nehru Canal and was about to reach near

Khubi Dass Hotel from Bahu to Chhuchakwas road, a trailer bearing Registration No.RJ-32GA-3040 being driven in a rash and negligent manner came from the opposite side and struck the bus from the side of the driver seat. On account of the impact, both the vehicles were damaged and multiple injuries were received by the bus passengers. An FIR No.299 dated 08.11.2017 was registered under Sections 279 and 337 of the Indian Penal Code, 1860 at Police Station Salhawas. The author of the FIR was Vikas. The deceased remained admitted in Oscar Super Specialty Hospital and Trauma Centre, Rohtak from 08.11.2017 to 26.11.2017 and eventually succumbed to his injuries on 02.12.2017. An amount of Rs.6,20,000/- was stated to have been spent on medicines and treatment and Rs.3,00,000/- was spent on blood transfusion, transportation and last rites. The owner and driver of the offending vehicle (respondent Nos.3 and 4 herein) filed their written statement stating therein that it was the bus bearing Registration No.HR-63-C-2881 which was being driven in a rash and negligent manner. The appellant-Insurance Company filed its written statement wherein it was pleaded that the accident took place due to contributory negligence of the drivers of both the vehicles. Though a plea was raised regarding the petition being bad for non-joinder and mis-joinder of necessary parties, however, no issue was claimed regarding non-joinder and mis-joinder of necessary parties. On the basis of the pleadings and the evidence, the following issues were framed :

1. Whether the accident, resulting into the death of Satender son of Rajesh Kumar and injuries to petitioner Manvir had taken place on 08.11.2017 at about 8:15/8:20 am near Khubi Dass Hotel due to rash and negligent

driving of vehicle i.e. Tralla/Trailer bearing registration No. RJ-32GA-3040 by respondent no.1, as alleged ? OPP

2. If issue no.1 is proved in affirmative, whether petitioners Santosh and Rajesh in MAC Petition bearing CIS No. MACP-39-2018 titled as “Santosh etc. Vs. Netarpal etc.”, is entitled to compensation, if so, to what amount and from whom ? OPP

3. If issue no.1 is proved in affirmative, whether petitioner Manvir in MAC Petition bearing CIS No. 47-2018 titled as “Manvir Vs. Netarpal etc.”, is entitled to compensation, if so, to what amount and from whom ? OPP

4. Whether the petitions are not maintainable in the present form ? OPR-3.

5. Whether respondent no.1 was not holding a valid and effective driving license on the date of alleged accident, if so, its effect ? OPR-3

6. Whether the respondent no.2 had contravened the terms and conditions of the Insurance Policy, if so its effect? OPR-3

7. Relief.

5. The Tribunal awarded the following compensation :

Sr. No.	Heads	Amount
1	Monthly Income	Rs.15,000/-
2	Annual Income	Rs.15,000x12 = Rs.1,80,000/-
3	Deduction 1/2	[Rs.1,80,000 – 90,000] = Rs.90,000/-
4	Multiplier 18	[Rs.90,000 x 18] = Rs.16,20,000/-
5	Medical expenses	Rs.6,53,368/-
6	Loss of future prospects	Rs.6,48,000/-
7	Loss of estate	Rs.16,500/-
8	Funeral expenses	Rs.16,500/-
9	Loss of Filial Consortium	Rs.44,000/-(petitioner no.1)
10	Loss of Filial Consortium	Rs.44,000/-(petitioner no.2)
	Total	Rs.30,42,368/-

6. Learned counsel for the appellant-Insurance Company would contend that it was a clear-cut case of contributory negligence as the bus hit the trailer from the front and it was virtually a head on collision. It is further the contention of the learned counsel that the salary certificate showing the income of the deceased as Rs.15,000/- per month which was produced as Ex.P61 was a forged and fabricated document and that PW8 - Proprietor of P.N. Sharma Hospital has stated that there was no appointment letter and there was no record of salary which he had brought on the said date.

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

8. In the present case, admittedly the driver of the offending trailer did not step into the witness-box who would have been the best person to depose regarding the manner in which the accident took place. Further, from the facts as narrated in the award, the trailer hit the bus on the driver's side and it was not a head-on collision as has been sought to be made out. The deceased who was sitting behind the driver was injured and eventually succumbed to his injuries. There was not an iota of evidence which was led by the appellant-Insurance Company to even remotely suggest that there was any contributory negligence. Even otherwise, the driver and the owner of the bus bearing Registration No.HR-63-C-2881 were not impleaded as parties and in the absence of the driver and owner the claimants cannot be fastened with the liability of contributory negligence. In view thereof, I do not find any merit in the argument regarding contributory negligence raised by the learned counsel for the appellant-Insurance Company.

9. The second argument of the learned counsel for the appellant-Insurance Company that the salary certificate showing the income of the deceased as Rs.15,000/- cannot be relied upon also deserves to be rejected. Admittedly three-years diploma certificates of the deceased were placed on the record as Ex.P7, Ex.P8 and Ex.P9 as well as the salary certificate as Ex.P61. The witness i.e. Proprietor of P.N. Sharma Hospital stepped into the witness box as PW8 stated that the deceased was working as a Lab Technician in P.N. Sharma Hospital since 2016 and was earning Rs.15,000/- per month. There is no reason to disbelieve the said salary certificate in the absence of any evidence to the contrary.

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.

22.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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