



119-2

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

FAO-4952-2024 (O&M)**Date of Decision : 22.10.2024**

New India Assurance Co. Ltd.

... Appellant(s)

Versus

Manvir & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

ALKA SARIN, J. (Oral)**CM-18730-CII-2024**

1. This is an application for condonation of delay of 08 days in filing the appeal.

2. For the reasons stated in the application, delay of 08 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 injured - Manvir (respondent No.1) - was the driver of the bus bearing Registration No.HR-63-C-2881 and it was a foggy day and he 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 injured - Manvir - as well as 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 injured - Manvir - was admitted in Sunflag Hospital, Sheela Bye-pass, Rohtak where he was operated. An amount of Rs.2,00,000/- was stated to have been spent on his treatment, medicines, special diet, attendant and transportation etc. It was further stated that the injured - Manvir - had become disabled due to the said accident. The owner and driver of the offending vehicle (respondent Nos.2 and 3 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	Medical expenses	Rs.65,904/-
2	Transportation charges	Rs.20,000/-
3	Special Diet	Rs.15,000/-
4	Pain and suffering	Rs.30,000/-
5	Loss of income	Rs.10,000/-
	Total	Rs.1,40,904/-

6. The only argument raised by the learned counsel for the appellant-Insurance Company is that it was a clear-cut case of contributory negligence as the bus hit the offending trailer from the front and it was virtually head on collision.

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. 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, the argument of the learned counsel regarding contributory negligence is rejected.

9. 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