IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.109-A

Case No. : FAO-6060-2023 (O&M)

Date of Decision : May 17, 2024

DHFL Insurance Company Limited
(now known as Navi General Insurance
Company Limited) .... Appellant

vs.

Ankita Gupta and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sachin Ohri, Advocate
for the appellant – Insurance Company.

* * *

GURBIR SINGH, J. :

1. **CM-20894-C-II-2023 :** This is application under Section 5 of the Limitation Act for condonation of delay of 92 days in filing the appeal. For the reasons mentioned in the application, the same is allowed and delay of 72 days in filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal :** Challenge in this appeal filed by DHFL Insurance Company Limited (hereinafter referred to as – Insurance Company) is to the Award dated 10.04.2023, whereby learned Motor Accident Claims Tribunal, Bathinda (for brevity – the Tribunal) allowed the claim petition filed by respondents/claimants being daughter, son and mother-in-law of Anju Gupta, who died in a motor vehicular accident.

3. Parties hereinafter are being addressed as per their original status

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in the claim petition.

4. In brief, the case of the claimants is that Avinash Gupta, along with his wife Anju Gupta, died in motor vehicular accident, which took place on 11.08.2020 at about 09:40 PM. They both were returning from their shop on Activa Scooty. When they reached on GT Road, one Honda City Car bearing registration No. PB-03-AX-7878 (hereinafter called – the offending vehicle) came from the side of Bathinda at a very high speed, being driven by its driver in a rash and negligent manner and struck against their scooty. Resultantly, both of them fell on the road. Later, both succumbed to their injuries and FIR No.145 dated 12.08.2020, under Sections 279, 337, 338 and 427 IPC was registered with Police Station Kotwali, Bathinda against the unknown driver of the offending vehicle. Claimants are son, daughter and mother-in-law of deceased.

5. Upon notice, respondent no.1, who is driver-cum-owner of the offending vehicle, appeared before the learned Tribunal and contested the petition by filing written statement. He denied the accident having taken place with the offending vehicle and contended that false claim petition was filed to fasten the liability of claim amount.

6. The appellant Insurance Company, which was respondent no.2 in the claim petition, also contested the claim petition and filed separate written statement while admitting that the offending vehicle was insured with the Insurance Company.

7. On the basis of the pleadings of the parties, after framing issues, and appreciating the evidence on record, the learned Tribunal allowed the

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claim petition and the claimants were held entitled to compensation of Rs.36,24,852/-. Both respondents, driver-cum-owner and Insurance Company of the offending vehicle were held jointly and severally liable to pay the compensation alongwith interest @ 7.5% per annum on the awarded amount.

8. Learned counsel for the appellant Insurance Company has argued that the amount awarded by the learned Tribunal in favour of the claimants is highly excessive and exorbitant as the claimants were not dependent upon the deceased. To claim the compensation, it has been alleged that the deceased Anju Gupta was part time Manager in the business of furniture and also taking tuitions. The ITR Ex.A-7, relied upon by learned Tribunal, to consider her salary as part time Manager, was filed after her death and cannot be taken into consideration. It is also not clear from the ITRs filed by her husband whether the salary was being paid to the deceased as his wife in his business. As far as income from tuitions is concerned, the same cannot be counted because there is no proof on record in that regard. No documentary evidence is brought on record regarding income of the deceased. It is further argued that it is a case of contributory negligence as the accident in question was not result of sole rash and negligent driving by the driver of the offending vehicle. Rather, the victims themselves were negligent on account of two reasons i.e. (i) the deceased were not wearing helmets and (ii) while entering on G.T. Road, they did not bother about the ongoing heavy traffic whereas they should have been much more careful while entering the G.T. Road from the link road. It is clearly a case of

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contributory negligence but the respondents, driver-cum-owner and Insurance Company have been held liable to pay the entire amount of compensation.

9. I have heard submissions of learned counsel for the appellant Insurance Company and perused the case file.

10. The appellant has challenged the Award on the ground that there is contributory negligence on the part of the deceased as she was not wearing safety helmet while travelling as pillion rider on the two wheeler. The negligence of the deceased is to be seen from the angle whether the act of the deceased contributed in causing accident or not. In other words, wearing or non-wearing of helmet by the pillion rider has not, in any way, contributed to the causing of the accident. The driver of the offending vehicle did not step into the witness-box. Even otherwise also, contributory negligence is to be proved as a matter of fact. In the absence of any evidence on the part of the respondents, that the deceased, in any way contributed to the causing of the accident, I am of the view that the learned Tribunal has rightly held that the offending vehicle was responsible for causing the accident.

11. The learned Tribunal relied on copy of Aadhar Card of deceased (Ex.A-1) and copy of PAN Card (Ex.A-2) and held that date of birth of the deceased was 24.02.1974. The accident has taken place on 11.08.2020. So, the deceased was about 46 years and 05 months old at the time of accident and accordingly, multiplier of 13 has been taken into consideration for assessing the income of the deceased. The income tax returns for the

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assessment year 2016-17 (Ex.A-3), 2017-18 (Ex.A-4), 2018-19 (Ex.A-5), 2019-20 (Ex.A-6) and 2020-21 (Ex.A-7) were proved by the claimants. Since the return for the year 2020-21 (Ex.A-7) was filed after the death of the deceased, the learned Tribunal did not take the same into consideration for assessing the income of deceased and has rightly come to the conclusion that the deceased Anju Gupta was having two sources of income – one as salary being employee in the shop owned by her husband and other from the tuition work. The average of previous three income tax returns, for assessing the income, was taken into consideration and income of the deceased has been taken as Rs.3,17,040/- per annum. In view of the age of the deceased, 25% was added as future prospects. One-third income was deducted as personal expenses of the deceased. Learned counsel for the appellant failed to point out any infirmity in the Award passed by the learned Tribunal, which is in accordance with law and does not warrant any interference by this Court.

12. In view of the above, the appeal is held to be without any merit and the same is accordingly dismissed in limine.

13. Pending applications, if any, shall stand disposed of along with this judgment.

May 17, 2024 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*

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