

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

(121)

FAO-5232-2024 (O&M)

Date of Decision:-**08.11.2024**

THE NEW INDIA ASSURANCE CO. LTD.

... Appellant

Versus

SUNITA KUMARI BAJAJ AND OTHERS

... Respondents

-:-

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present:- Mr. Krishna Kant, Advocate
for the appellant.

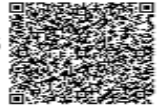
Mr. Ram Kumar Saini, Advocate;
Mr. Ankit Saini, Advocate and
Mr. Ruby Gupta, Advocate
for caveators/respondents No.1 and 2.

ALOK JAIN, J. (Oral)

1. The present appeal has been filed *inter alia* challenging the Award dated 04.07.2024 passed by learned Motor Accident Claims Tribunal, Hisar, whereby the claim-petition has been allowed in favour of the claimants.

2. Learned counsel for the appellant-Insurance Company has vehemently argued that the Tribunal has fell in error in holding that the offending vehicle was responsible for the accident, as it is evident from the photograph which clearly demonstrates that deceased's vehicle came from the wrong side of the road.

3. Learned counsel for the appellant-Insurance Company further relied upon photograph (Annexure A-6) to build an argument that the offending vehicle was parked on the extreme left hand side of the road

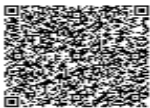


which demonstrate that it was the deceased, who was coming from wrong side of the road.

4. Per contra, learned counsel for the caveators/respondents No.1 and 2 submitted that the appellant-Insurance Company cannot be permitted to build a new case in the appeal as it was the specific stand taken by the appellant in the written statement which was filed before the learned Motor Accident Claims Tribunal and the same is reproduced hereinunder as:-

“That the contents of para No. 24 of the claim petition are wrong, hence denied and not admitted to be correct. It is denied that on 25.07.2020, the deceased Rakesh Kumar Bajaj (now deceased) was driving his Car and was coming from Hisar Cantt side to Hisar City after doing his work. It is further denied that he was followed by his brother namely Raj Kumar in another Car. It is further denied that Sh. Rakesh Kumar was driving his Car after adhering all the traffic rules. It is further denied that when he reached some ahead of Petrol Pump towards Adhar Hospital on South Bypass Hisar, a Truck bearing Registration No. HR- 39D-9322 which was wrongly parked in the middle of the road, without any signs, indicators and tail light etc., he could not see the wrongly parked truck and as a result of which his Car strucked into the truck in question. The said accident took place due to the rash and negligent driving of deceased Rakesh Kumar Bajaj. The deceased was driving the Breza Car in a rash and negligent manner and he strucked from behind into the Truck in question. It is specifically denied that the Truck was standing on the middle of the road. Rather the truck was being driven by respondent no.1 at a very slow speed but even then the deceased strucked his Car from behind into the Truck in a rash and negligent manner. The petitioners made this concocted story regarding the parking the truck. Moreover, Sh. Rakesh Kumar was not present at the time of alleged accident. He was a procure witness as he is the real brother of the deceased. The police of P.S. Sadar, Hisar lodged false case against respondent no.1 inclusion and in connivance with the petitioner. All the allegations as made in this para are specifically denied.”

5. Having heard the counsel for the parties and upon a careful examination of the facts of the case and the arguments so advanced by the counsel for the parties, respondents No.1 and 2 i.e. driver & owner of the vehicle had denied the factum of the accident, whereas it is a case where the



appellant fails to demonstrate there was any overt act by the respondents that could absolve the appellant from the liability. Therefore, consequently, the appellant cannot be exonerated. Appellant has also failed in demonstrating that the alleged offending vehicle was parked with any reflectors, signs or lights, moreover no cogent evidence was led by the appellant-Insurance Company to show that the reflectors, light or the indicators were operational at the time of alleged accident from where it can be inferred that the deceased himself was responsible for the said accident.

6. In view of the above discussion, the Court does not find any merit in the instant appeal and the same is hereby dismissed.

7. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

08.11.2024
Gaurav Sorot/S. Sethi

(ALOK JAIN)
JUDGE

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