

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

FAO-688-2021 (O&M)

Date of decision: 14.02.2025

TATA AIG GENERAL INSURANCE COMPANY LTD

..Appellant

Versus

MEENA AND ORS

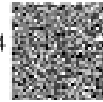
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate
Mr. Arjun Sangwan, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. This appeal has been filed by the insurance company to assail the correctness of Motor Accident Claims Tribunal's (in short 'Tribunal') award of Rs.26,94,160/- passed on 26.02.2010 on account of death of Sh. Bijender @ Kala, aged 42 years in a motor vehicular accident. As per the case of the claimants, Sh. Bijender @ Kala was coming from his village Kumbha to Hansi on his motorcycle bearing registration plate No.HR-21E-9537, at about 07:00 p.m. When he reached near Shiv Gorakh Dharam Kanta, Kumbha-Petwar Road, one truck bearing the registration plate No.HR-55H-5829 was parked on the road in a haphazard manner. Sh. Bijender @ Kala was unable to notice the truck and his motor cycle collided with the said truck from behind, resulting in his death. In order to prove their case, the claimants examined the widow and Sh. Shiv Kumar, an eye-witness. The Court came to a conclusion that the deceased was earning Rs.16,660/- per month as a salary while working as a driver in a company.



The insurance company has challenged the award on following two grounds:-

- i. The deceased was contributory negligent as he collided against a stationary truck.
- ii. While relying upon the judgment passed in **Raj Rani and others Vs. Oriental Insurance Company Ltd., 2009 (13) SCC 654**, learned counsel for the appellant submits that contributory negligence should be assumed by the Court. He also assails the correctness of quantum of compensation.

2. This Court has considered the submissions of learned counsel for the appellant.

3. When eye-witness Sh. Shiv Kumar appeared in evidence, the counsel representing the insurance company did not properly cross-examine the witness. He was not even given a suggestion that the deceased could have noticed the stationary truck from a sufficient distance to enable him to apply brakes. If the insurance company wants to prove that the deceased was contributory negligent, it is required to lead some evidence. The contributory negligence is a positive act or omission on the part of deceased. Hence, the insurance company was required to prove the same, however, no evidence in this regard has been led.

4. **Raj Rani's case (supra)** has not laid down as a general rule that contributory negligence should be assumed in all cases where the accident has taken place with a stationary vehicle.

5. With regard to second submission, it may be noticed that widow appeared in evidence and stated that the deceased was employed as a driver



in a company. Subsequently, a salary slip was also produced. The counsel representing the insurance company failed to properly cross-examine her on the point of income of the deceased.

6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Dismissed accordingly.

8. All the pending miscellaneous applications, if any, are also disposed of.

February 14th, 2025

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No