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

FAO-4010-2024 (O&M)

Date of Decision : 14.01.2025

The New India Assurance Company Ltd.

... Appellant(s)

Versus

Rajwati & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Singla, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellant-Insurance Company (insurer of motorcycle bearing registration No.CH-01-CA-6378) challenging the impugned award dated 28.03.2024 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal').

2. Brief facts relevant to the present *lis* are that on 15.10.2021 Parveen (deceased) and his friend Ankur were riding on a motorcycle bearing registration No.CH-01-CA-6378. Parveen (deceased) was pillion rider on the motorcycle. At about 11/12.00 at night, when they approached Surajpur on the Pinjore-Panchkula Road, the motorcycle was being driven by Ankur at a high speed. The motorcycle developed a mechanical issue and in the meantime an Innova Car came from behind and struck against the motorcycle. Both the riders of the motorcycle died in the accident. An FIR bearing No.409 dated 16.10.2021 was registered under Sections 279, 304-A and 427 of the Indian Penal Code, 1860. Claim petition was filed on account of death of Parveen. The owner of the motorcycle bearing registration

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No.CH-01-CA-6378 filed a written statement raising various preliminary objections qua maintainability etc. All the averments were denied. The Insurance Company (appellant herein) filed a separate written statement raising various preliminary objections. On merits it was stated that the claim petition was a result of a collusion. On the basis of the pleadings, the following issues were framed :

1. Whether Parveen has died on 19.10.2021 in the accident caused by Ankur by driving of Motorcycle bearing registration No. CH-01-CA-6378 in a rash and negligent manner ? OPP

2. Whether the claimants are entitled to compensation, if so to what amount and from whom ? OPP

3. Whether respondent no.1 was not having a valid and effective driving license at the time of accident ? OPR2

4. Relief.
3. The Tribunal on issue No.1 held that it was a case of composite negligence on the part of the driver of the Innova Car as well as the rider of the motorcycle and awarded the following compensation :

Annual gross income ₹11,622 x 12	₹1,39,464/-
Addition of 40% on account of future prospects in view of age of deceased	₹1,39,464+55,785 = ₹1,95,249/-
Deduction of 50% on account of personal expenditure being bachelor	₹1,95,249-97,624 = ₹97,625/-
Multiplier of 18 to be applied in view of his age at the time of death	₹97,625 x 18 = ₹17,57,250/-
Compensation payable on account of dependency	₹17,57,250/-

Amounts under the heads loss of estate and funeral expenses and parental consortium were also awarded. Aggrieved by the same, the appellant-Insurance Company has filed the present appeal.

4. The only argument raised by the learned counsel for the appellant-Insurance Company is that there was no negligence on the part of the rider of the motorcycle and that it was the Innova Car which had hit the motorcycle from behind. It is further the contention that in the FIR it was only stated that the Innova Car had hit the motorcycle from behind and, hence, it could not have been held to be a case of composite negligence.

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

6. It is trite that the cases under the Motor Vehicles Act, 1988 are to be decided on the touchstone of preponderance of probabilities. Hon'ble Supreme Court in the case of **Anita Sharma & Ors. vs. The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]** has held as under :

*“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in *Dulcina Fernandes v. Joaquim Xavier Cruz* (2013) 10 SCC 646, wherein this Court reiterated that :*

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530: (2009) 5 SCC (Civ) 189: (2010) 1 SCC (Cri) 1101]).”

7. In the present case, one of the eyewitnesses, namely, Triloki Raj, had stepped into the witness box as PW2 and he had categorically stated in his examination-in-chief that the motorcycle was being driven at a high speed and in a rash and negligent manner. In the cross-examination, no suggestion was even put to the said witness that the motorcycle was not being driven at a high speed and in a rash and negligent manner. No evidence was led to the contrary by the appellant-Insurance Company. In the absence of any evidence, no fault can be found with the impugned award passed by the Tribunal.

8. In view of the above, I do not find any merit in the present appeal. The present appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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