



**FAO No.6206 of 2010 (O&M)**

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

**FAO No.6206 of 2010 (O&M)**

**Date of Reserve: 30.04.2025**

**Date of Decision: 06.05.2025**

**NEW INDIA ASSURANCE CO LTD.**

**.....Appellant(s)**

**Vs**

**SURILA KUNDU AND OTHERS**

**...Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. R.C. Gupta, Advocate  
for the appellant.

Mr. Vipul Sharma, Advocate  
for respondent Nos.1 to 3.

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**HARKESH MANUJA, J.**

[1]. By way of present appeal, challenge has been laid to an award dated 21.07.2010 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred as "learned Tribunal"), whereby an amount of Rs.13,29,500/- was awarded as compensation to respondent Nos.1 to 3/claimants along with interest @ 7.5% per annum.

[2]. Briefly stating, respondent Nos.1 to 3 being dependents of deceased filed claim petition before the learned Tribunal praying for grant of compensation to the tune of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with interest @ 12% per annum on account of death of Jagdish Kumar in a motor vehicular accident which took place on 05.09.2007, while alleging rash and negligent driving of respondent No.4/driver.

[3]. Learned Tribunal after appraisal of evidence led by the parties and the record found that the accident occurred due to rash and negligent driving of



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respondent No.4/driver and held appellant/Insurance Company as well as respondent Nos.4 and 5 jointly and severally liable, thereby awarding compensation in the following manner: -

<b>S.No</b>	<b>Heads of Claim</b>	<b>Amount (in Rs)</b>
1.	Loss of dependency	Rs.13,20,000/-
2.	Loss of consortium	Rs.5,000/-
3.	Funeral expenses	Rs.2,000/-
4.	Loss of Estate	Rs.2,500/-
	<b>Total</b>	<b>Rs.13,29,500/-</b>

[4]. Being aggrieved against the award dated 21.07.2010, the present appeal has been preferred by the appellant/Insurance Company for its setting aside on the issue of negligence of the offending vehicle or in the alternative for reduction of compensation as awarded by the learned Tribunal.

[5]. Learned counsel for the appellant/Insurance Company submitted that the learned Tribunal failed to appreciate the material contradiction in the evidence available on record in the shape of testimony of eyewitness Baggu Khan, who in his affidavit stated that offending truck came on the wrong side of the road whereas in the FIR registered at his instance, it was stated that both vehicles struck against each other from the opposite side and as such present being a case of head on collision, the absolute negligence of truck was wrongly recorded. He further argued that learned Tribunal failed to consider the fact that loan account was in the name of deceased and respondent No.2, thus, the assessment of income of the deceased while considering the said loan being paid by him was wrongly

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done and as such the income assessed was required to be reduced thereby reduction of compensation amount.

[6]. Per contra, learned counsel for respondent Nos.1 to 3/claimants argued that the learned Tribunal erred to ignore the income tax return of the deceased while assessing his income and as such the compensation amount was liable to be enhanced. He also submitted that the involvement of the offending vehicle as well as the factum of negligence of its driver was aptly proved on record from the statement of eyewitness Baggu Khan and as such, present appeal was liable to be dismissed. Lastly, he concluded the arguments by submitting that compensation under conventional heads being on the lower side is also liable to be enhanced.

[7]. I have heard learned counsel for the parties and perused the paper-book of the case. I do not find force in the arguments advanced by learned Counsel for the appellant.

[8]. Perusal of record reveals that FAO No.725 of 2011 has already been preferred by the respondent Nos.1 to 3/claimants with regard to enhancement of compensation awarded by the Tribunal though this fact was never brought to the notice of this Court by either of the parties at the time of hearing. Therefore, the submissions made on behalf of respondent Nos.1 to 3/claimants qua quantum of compensation cannot be considered in the present appeal. Only the question of contributory negligence is being decided.

[9]. Upon perusal of record, it can be easily traced out that undisputedly the deceased was hit by the offending vehicle driven by respondent No.4 and the accident was witnessed by one Baggu Khan, who was examined by the respondent Nos.1 to 3/claimants as PW2. From the contents of challan (Ex.P-8) it was evident



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that upon investigation respondent no.4 was solely arraigned as an accused for criminal prosecution. Further, testimony of PW2 supported by his affidavit clearly established the factum of negligent driving of respondent no.4 and the veracity of this fact could not be impeached even during his lengthy cross-examination. Furthermore, the best witness in such circumstances was the driver of the offending vehicle i.e respondent No.4, but he chose not to appear in the witness box. Even the appellant/Insurance Company never made any efforts to summon respondent No.4 for cross-examination and, thus adverse inference could be drawn against him coupled with the fact that neither appellant nor respondent Nos.4 & 5 ever made a complaint to higher police authorities with regard to any faulty investigation or the fact that respondent No.4 was being wrongly implicated in the present case. Accordingly, no interference is called for with the findings recorded by the learned Tribunal on the aspect of negligence of respondent No.4.

[10]. The Tribunal rightly held appellant/Insurance Company as well as respondent Nos.4 and 5 jointly and severally liable to pay the compensation to respondent Nos.1 to 3/claimants as the offending vehicle i.e Truck No.HR-38-C-2946 was insured with the appellant vide Insurance Policy Ex.R-6.

[11]. In view of the discussion made hereinabove, no ground in the well reasoned award passed by the Tribunal is made out, thus, the present appeal filed at the instance of Insurance Company is hereby dismissed. Pending miscellaneous application(s) if any, shall also stand disposed of.

**May 06, 2025**

*Atik*

**(HARKESH MANUJA)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No