



FAO-8535-2017

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**FAO-8535-2017 (O&M) and
XOBJC-59-CII-2018
Date of decision : 1.5.2025**

New India Assurance Company Limited

... Appellant

VERSUS

Sukaksha and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Paul S. Saini, Advocate with
Mr. Shayon Sen, Advocate,
for the appellant.

Mr. Sandeep Kotla, Advocate,
for cross-objectors/respondents No.1 and 2.

PANKAJ JAIN, J. (Oral)

The insurance company is in appeal. The claimants have filed cross objections. Challenge is to the award dated 4.8.2017 passed by Motor Accident Claims Tribunal, Fatehabad whereby the claim petition filed by the claimants stands allowed granting them compensation to the tune of ₹ 13,90,000/- on account of death of Amit Kumar who died at the age of 22 years in a motor vehicular accident.

2. The appellant has raised challenge to the award assailing findings on issue No.1 claiming that nature of the accident was such that it being act of God, the driver cannot be held to be rash and negligent. Apart from the aforesaid substantive issue, further challenge is to the quantification



as well on the ground that future prospectus have been granted @ 50% and the same ought to have been granted @ 40%.

3. The cross objectors have questioned the quantification of compensation claiming that the monthly salary of the deceased was wrongly assessed at a meagre sum of ₹ 6,000/-. The deceased worked as an electrician and thus, ought to have been assessed at least as a skilled worker and granted notified minimum wages @ 9,000/-.

4. As per the claim petition, the deceased was travelling with Sohan Lal respondent No.3 on a motorcycle. The motorcycle was being driven by Sohan Lal in a rash and negligent manner. A stray animal, Nilgai, suddenly appeared on the road. The vehicle, being driven at a high speed, could not be controlled by Sohan Lal. Both Sohan Lal and Amit Kumar fell down. Sohan Lal fell on *kutch*a portion whereas Amit Kumar fell on the metalled part of the road. The same resulted in multiple injuries to Amit Kumar who finally succumbed to his injuries on 16.9.2016.

5. Mr. Saini submits that sudden appearance of stray animal before a vehicle and consequent accident cannot be held to be result of rash and negligent driving. He further submits that at the most, the claimants shall be entitled for compensation under Section 163-A of the Motor Vehicles Act, 1988 that is the compensation awarded as per structural formula.

6. Per Contra, Mr. Kotla submits that the precise issue in regard to negligence of driver involving stray animal has already been dealt by this Court in a case of **Reliance General Insurance Company Limited v. Neetu and others** reported as 2017 (2) PLR 258 and **Chaman Lal v. Anil**



Kumar and others reported as **2007 (1) PLR 719**. The plea of act of God stands repealed and the driver was held to be rash and negligent. He submits that the ratio of law laid down by this Court in the aforesaid precedents would be fully applicable to the facts of the present case.

7. I have heard the counsel for the parties and carefully gone through the record of the case.

8. The issue with respect to sudden appearance of Nilgai and consequential accident and the plea of act of God raised by the insurance company was dealt by this Court in case of **Neetu and others (supra)** observing as under : -

“In the present case, the DDR was lodged the very next day and simply because subsequently, the ‘Nilgai’ mentioned in the DDR was not mentioned in the FIR, the factum of the deceased-driver having lost control over the vehicle, cannot be changed. Presuming that the first version was the correct version as that is normally the correct version and a ‘Nilgai’ actually came on the road, though in the opinion of this Court, correctly even the State/National Highway Authority of India, whosoever was responsible for the upkeep of the road, should have been impleaded as a party so as to foist liability on to the those authorities also, for not ensuring barricading of highways in a country where fast cars are now the norm; however, in a situation where drivers on Indian roads know that such thing do happen, it is obvious that the speed of the driver in this case was excessive, otherwise simply by trying to avoid an animal



coming on to the road, the car would not have turned turtle, somersaulting into the side ditches, resulting injuries and death to two people.

Hence, the contention that there was no negligence of the driver and the accident took place wholly as “an act of God” is rejected.”

9. The same was also dealt by another Bench of this Court in case of ***Chaman Lal (supra)*** while observing as under : -

“9. Learned counsel for the appellant also placed reliance on the judgment of the Hon’ble Supreme Court in the case of Kaushnuma Begum and others v. New India Assurance Co. Ltd. And others, 2001 (1) RCR (Civil) 559 (SC) : 2001 ACJ 428 to contend that even when front tyre of the jeep burst while in motion, it was held that it was a case of negligent and, therefore, the claimant could not have been denied the compensation.

10. On the basis of the judgment of the Hon’ble Supreme Court the contention of the learned counsel for the appellant was that merely because a cow had appeared all of a sudden which was the cause of the accident and the deceased had made a statement to this effect, it could not absolve the jeep driver of his liability. In the present case, it would be seen that in case the jeep driver was at a normal speed, then he ought to have stopped the jeep rather than to go on the wrong side of the road



and hit the scooter. This act of the jeep driver clearly shows that the jeep was being driven rashly and negligently.”

10. In view of the aforesaid precedents, the legal proposition which emerges is that the driver of a motor vehicle needs to be diligent enough to control the vehicle to meet the sudden eventualities like appearance of stray animal etc. This Court has no hesitation to hold that the Tribunal rightly held the driver of the offending vehicle rash and negligent and thus, answered issue No.1 in favour of the claimants. The plea raised by Mr. Saini with respect to the accident having been occurred by a sudden appearance of the stray animal being act of God is hereby rejected.

11. Coming to the quantification of the compensation payable to the claimants, this Court finds that though the claimants claim that the deceased was working as an electrician, however, no cogent evidence was led apart from oral testimony. In view thereof, the income of the deceased is being assessed as per minimum wages notified by State of Haryana for the relevant date payable to unknown skilled labour i.e. ₹ 8,000/-. Mr. Saini is right in contending that 50% increase on account of future prospects cannot be sustained in view of ratio laid down by Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others (2017) 16 SCC 680** and the same is struck down to 40%. The deceased died bachelor and therefore, ½ cut has rightly been applied. The multiplier of 18 has rightly been granted. Both the claimants shall also be entitled to loss of consortium of ₹ 48,000/- each, ₹ 18,000/- for funeral expenses and ₹ 18,000/- for loss of estate. The medical expenses granted on account of actual basis are ordered to be maintained.



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12. Wit the aforesaid modification, the appeal as well as the cross objections are disposed of.

(PANKAJ JAIN)
JUDGE

May 1, 2025
Paritosh Kumar

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