



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO-1435-2025 (O&M)
Date of decision: 04.03.2025**

Liberty General Insurance Limited

...Appellant(s)

Vs.

Rajbala Devi and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Kodan, Advocate
for the appellant.

NIDHI GUPTA, J.

CM-4364-CII-2025

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 43 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 43 days in filing the accompanying appeal is condoned.

FAO-1435-2025 (O&M)

The present appeal has been filed by the Insurance Company laying challenge to the Award dated 07.10.2024 passed by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the Tribunal") whereby the claim petition bearing MACP No. 29 dated 10.02.2022 filed by the claimants/respondents No.1 and 2 herein, under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter



referred to as “the Act”), has been allowed; and the claimants have been awarded compensation of Rs.51,86,162/-. The two claimants are the parents of the deceased Shivam Kumar, who is stated to have been about 21 years at the time of accident.

2. The learned Tribunal on the basis of the pleadings and the evidence adduced before it, concluded that the deceased Shivam Kumar had died due to the injuries suffered by him in a Motor Vehicular Accident that took place on 12.12.2021 at about 01:15 p.m. due to the rash and negligent driving of a Canter bearing registration No. DL-1LX-6969 (hereinafter referred to as “the offending vehicle”) which was being driven by respondent No.3; owned by respondent No.4; and insured by the appellant/insurance company. The above said compensation was awarded along with interest @ 9% per annum from the date of filing of the claim petition till actual realization.

3. Learned counsel for the appellant-Insurance Company assails the impugned Award dated 07.10.2024 by submitting that the learned Tribunal has wrongly attributed negligence to the offending vehicle by wrongly relying upon the testimony of alleged eyewitness PW3 Mohit. Learned counsel contends that Mohit had not witnessed the accident; and this fact has been admitted by Mohit himself during his cross-examination that *“The accident had already been taken prior to my reach to the place of the accident for about five minutes ago. I cannot tell the mode and manner of the accident as I did not witness the same.”*

It is contended that from the bare reading of the above testimony of



Mohit, it is clear that he had not witnessed the accident and had reached the spot few minutes after the accident. As such, negligence on the part of the offending vehicle could not be proved.

4. It is next submitted by learned counsel for the appellant that the learned Tribunal is also in error in ignoring the fact that there was contributory negligence on the part of the deceased in causing the accident in question. Learned counsel argues that in a petition under Section 166 of the Act, negligence on the part of the offending vehicle has to be proved for grant of compensation. It is the admitted case of the claimants that the offending vehicle was stationary at the time of accident and it was the deceased, who was riding a motorcycle, who came and struck into the stationary canter. However, this aspect of the matter has not been considered by the Id. Tribunal at all. It is submitted that it has been duly pleaded by the appellant in the present Grounds of Appeal at page 16 of the paper book, as under:-

“CONTRIBUTORY NEGLIGENCE

That the Ld. MACT did not appreciate the fact that the deceased was also negligent in the alleged accident and the following facts were ignored by the Ld. MACT while given finding on the issue of negligence.

i. That according to the facts recorded by the Ld. MACT in para 2 of the impugned award the motorcycle of the deceased hit the stationery Canter bearing No. DL-ILX-6969 parked on the G.T. road.

ii. That the same fact was recorded by the MACT in para 15 of the Award and the manner in which, the accident took place was also prescribed in deposition of alleged eye witness i.e. PW-3.



iii. That considering the totality of the facts and the case pleaded by the claimants, it is not in dispute that the motorcycle of the deceased hit the Stationery Truck parked in the kacha portion of the road.”

5. It is submitted that however, this aspect of the matter has not been considered by the Tribunal. In support of his contention, learned counsel for the appellant relies upon the judgments of Hon’ble Supreme Court in **‘N.K.V. Bros. (P.) Ltd. vs. M. Karumai Ammal and others etc.’ Law Finder Doc Id # 104536**; and **‘Raj Rani vs. Oriental Insurance Co. Ltd.’ Law Finder Doc Id # 226050**.

6. It is accordingly prayed that the present appeal be allowed; and impugned Award be set aside.

7. No other argument is raised on behalf of the appellant.

8. I have heard learned counsel for the appellant and perused the case file in great detail.

9. The facts as pleaded by the claimants in the present claim petition and as stated in the FIR (Ex.P-5) registered on the basis of statement of eyewitness Mohit, are that on 12.12.2021, the deceased was going to the house of his maternal uncle through Samalkha Flyover. At about 1.15 P.M., when he reached near Malik Petrol Pump, one canter no. DL-1LX-6969/offending vehicle, was found parked on the G.T. Road without any safety signal or sign. In the meantime, one motor cycle came there and struck to the said canter. Due to this, motor cyclist fell down on the road and when he went near that motor cyclist, he saw that the motor cyclist was his neighbour namely Shivam Kumar son of



Sohan Lal, resident of Kaimla, District Karnal, who received injuries in the accident. The number of motor cycle was HR91-7265, make Hero Honda. Thereafter he shifted the injured Shivam Kumar to Park Hospital, Panipat, with the help of police, where said Shivam Kumar succumbed to the injuries during his treatment. On this statement, case under section 283 and 304-A of I.P.C was registered.

10. It was also pleaded in the claim petition that at the time of accident, Shivam Kumar son of Sohan Lal was hale and hearty young person of 22 years of age; he was running the business of I.T. components and instruments under the name and style of M/s. Omaashrit Security Services and was earning an amount of Rs.60,000/- per month. It was further pleaded that claimants/parents of the deceased Shivam Kumar, were dependent upon the earnings of the deceased. After the accident, the claimants have lost the sole bread-earner of their family and now the claimants have no source of income and due to untimely death of the deceased, the claimants have been deprived of love and affection of the deceased. With these averments, claim petition was filed seeking compensation of Rs.1 Crore only.

11. It has been contended on behalf of the Appellant-Insurance company that negligence on the part of the offending vehicle was not proven; and therefore the learned Tribunal was in error in holding the offending vehicle negligent on the basis of the testimony of alleged eye-witness Mohit. In this regard, learned counsel has referred to cross-examination of PW3 Mohit, wherein he has ostensibly admitted that he



did not witness the accident in question. However, learned counsel has misread the testimony piecemeal. When the entire testimony of PW3 is read in context, it is clear that Mohit has stated as follows:-

“The accident had already been taken prior to my reach to the place of accident for about five minutes ago. I cannot tell about the mode and manner of the accident as I did not witness the same. The police was not present at the spot. I remained at the spot for about 2-4 minutes. The police had reached to the spot in my presence. The injured was taken to Park Hospital Panipat by the police.”

12. From the above, it is clear that all that Mohit has stated is that he did not witness the collision as it occurred; but it is not disputed that he had reached the spot barely 2-4 minutes later. Therefore, it cannot be said that Mohit was not eyewitness to the accident or that his statement cannot be relied upon. Admittedly, FIR was also registered on the basis of the statement made by PW3 Mohit.

13. It has next been contended by learned counsel for the appellant that there was contributory negligence on the part of the deceased as the deceased hit into the stationary offending truck. It has also been submitted that the said factum of contributory negligence on part of the deceased has not been considered by the learned Tribunal. However, on a direct Court query, learned counsel for the appellant has admitted that no such plea of contributory negligence was raised by the appellant before the learned Tribunal. As such, the appellant cannot be permitted to raise this plea, at this belated stage.



14. Further it has been admitted by the appellant that FIR (Ex.P5) was registered on the basis of the statement made by eye-witness PW3 Mohit. It has also been admitted by learned counsel for the appellant that after investigation, charge-sheet dated 08.02.2023 has been filed against respondent No.3/driver of the offending vehicle.

15. The judgments relied upon by the learned counsel for the appellant are not applicable to the present case being distinguishable on facts and law.

16. In view of the above, no ground is made out to interfere in the Award dated 07.10.2024. Hence, the present appeal is hereby **dismissed.**

17. Pending application(s) if any also stand(s) disposed of.

04.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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