

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.947 of 2003 and
X Obj No.2-CII of 2004
Date of Decision.21.01.2016

National Insurance Company LimitedAppellant
Vs.
Hans Raj and othersRespondents

Present: Mr. L.M. Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. S.N. Pillania, Advocate for
Mr. Amit Kumar Jain, Advocate
for respondent No.1/cross objector.

Mr. Pankaj Midha, Advocate
for respondent Nos.2 and 3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The appeal is by the insurance company challenging the finding of the Tribunal that there had been an accident involving the insured's vehicle. There is a cross objection of the claimant seeking for enhancement.

2. The case of the claimant was that on the intervening night between 08.06.2000 and 9.6.2000, the claimant who was an Assistant Sub Inspector was returning from his place of duty to his residence and at that time, the insured's truck driven by the 1st respondent came on the wrong side of the road and hit him and fled without stopping. Yet another Police Constable on duty was a witness to the accident but he

could not note down either the registration number nor did he know the name of the driver. The alleged driver was said to have been tracked and arrested on the additional statement given by the author of the FIR PW4 Ishwar Singh. In the cross-examination by the insurance company, it was elicited that he had originally made reference to an unknown vehicle as having caused the accident and that he had not also noted down the number of the vehicle. The claimant himself gave evidence of the fact that he had been hit on the wrong side of the road only by the truck. Evidently he could not have noticed the vehicle number or the identity of the driver. The insurance company had an investigator appointed and the investigator had given a report to the police and had been examined as RW1. He stated that the claim was a fake one and that the truck had not been involved in the accident. The driver himself was examined as RW2 and he had also stated that he had been falsely implicated.

3. More significantly, the investigator who prepared a report to say that it was a fake one has not given the details of the investigation which he had allegedly carried out and how he came to the conclusion that the vehicle had not been involved. It is not as if the person shown to be the driver of the truck was not the driver at all or that there was no such truck. It is also not the result of the investigation that the vehicle had not been driven on that night by the driver or that he had gathered evidence that the vehicle had not passed through the site of the accident. Even the driver admitted to the driving of truck No.HR-46-9431 and he admitted that he was going towards Patial Chowk Jind after emptying the truck at Safidon. He was only trying to explain that he was

driving the truck at a moderate speed and he had not involved his vehicle in any accident. If the police report revealed that particular vehicle had been involved and the involvement of the vehicle was spoken by the police official who had claimed that he had seen the truck's involvement and later he knew the name of the driver as well on the basis of which the driver was also arrested, the evidence that was led by the insurance company was not sufficient to disprove the assertion made by a witness and the fact that the driver had been challaned for criminal trial. Ideally the police investigator could have been examined to gather the details of the investigation of the persons who he examined and how he was able to gather a sure information about the involvement of the vehicle. Ideal situations cannot at all times exist for eye witness who actually sees the incident does not record details of the registration number of the vehicle as well as the name of the driver. If the accident had taken place in the wee hours of the intervening night between 8.6.2000 and 9.6.2000, the identity of the vehicle could be matter of inference depending on the likely vehicles which had passed at that time. If Ishwar Singh, therefore, had seen a truck and made a reference about the fact that he had seen a truck and the driver of the vehicle himself admitted his driving the vehicle at that night, I will find no serious error by a Motor Accident Claims Tribunal to gather that there was sufficient evidence for it to take a judicial view that the vehicle must have involved. If a Motor Accident Claims Tribunal had evidence before it on the basis of which it had exercised its mind and taken a decision, I will be loathe to make an intervention unless there was something very seriously amiss of the total

unlikelihood of the involvement of the vehicle. I decline to make any intervention.

4. As regards the quantum of compensation that is assessed, the Tribunal had provided for the entire medicines, provided adequately for future treatment and also assessed the loss of income adequately @₹18,000/- per year and applied a multiplier of 15. The claimant had injuries on all his body and he had fractures that had been reduced by surgical intervention resulting in 43% permanent disability. The doctor who had examined him gave evidence as PW2 to state that he was having Arthritis and functional loss on account of the fracture of the left femur and that further there had been restriction in movement of his left knee joint. The Tribunal had also provided adequately for transportation charges at ₹20,000/- and special diet at ₹20,000/-. In the grounds of cross objections, it is stated that he had spent ₹70,000/- for transportation and ₹70,000/- for special diet. Though they are pecuniary heads, the level of proof which is necessary to make a modification must be such as that the Tribunal deliberately discarded some document. I do not think any such mistake as having been occurred and I am of the view that overall consideration of the compensation as assessed by the Tribunal was adequate and just and would require no further modification.

5. The appeal and the cross objection are both dismissed confirming the award of the Tribunal.

(K. KANNAN)
JUDGE

January 21, 2016
Pankaj*