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

FAO No.5594 of 2009 (O&M)
Date of Decision.17.02.2016

United India Insurance Company Limited ....Appellant

Vs.

Sunita and others ......Respondents

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Mr. Pankaj Maini, Advocate
for respondent Nos.1 and 2.

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. (ORAL)

1. The appeal is at the instance of the insurer to contend that the vehicle had not been proved to be involved in the accident. The accident as reported in the FIR was that on 23.10.2007 when one Jai Singh was driving a motor-cycle, he dashed against a cow and dashed against the deceased Satpal who was standing in the side of the road. Yet another person who was said to be standing alongside Sat Pal was one Raj Kumar who gave the FIR three days later and also supported his own version before the Tribunal. The insurance company was trying to rely on the cancellation report which made a reference to the fact that the deceased himself was driving the vehicle and he dashed against a cow, fell down and suffered injuries. This version in the cancellation report was rejected by the Tribunal, it proceeded to rely on the

statement given by Raj Kumar in FIR and granted compensation.

2. Learned counsel appearing for the appellant contends that the cancellation of FIR ought to have lent an important value for the Tribunal to decide on whether the insurance company could have been made liable or not. The insurance company has very limited line of defence under Section 149 of the Motor Vehicles Act. If it wants to join issues on aspect of negligence, it ought to place the evidence before the Tribunal to contend that the insured had not been in any way responsible and the person who was said to have driven the vehicle was not a person who was actually driving the vehicle. If the contention were to be that the deceased himself was driving the vehicle, it was bound to be stated by the insurer by giving appropriate evidence and not merely relying on a reference in the FIR that the deceased was driving the vehicle.

3. The counsel for the appellant would also make reference to the fact that a statement said to have been made before the doctor at the time when the deceased was brought to the hospital that the deceased himself was driving the vehicle. Any statement by person who had not testified at the Tribunal in the manner in which the insurer now pleads for cannot be relied up. The basis for the cancellation, namely, of the owner contending that he had delivered the vehicle to the deceased and he was driving the vehicle or Jai Singh, who was said to be driving the motor cycle at that time saying that he did not drive the vehicle and it was only Sat Pal who drove the vehicle, were not there before the Tribunal. I will not, therefore, take the recital in the cancellation report as of any significance to displace the testimony given

by Raj Kumar who claimed to be an eye witness.

4. The decision taken by the Tribunal is perfectly justified and it calls for no intervention. The appeal is dismissed.

(K. KANNAN)
JUDGE

February 17, 2016
Pankaj*