

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

-.-

FAO 3965 of 2016 (O&M)
Date of decision: 14.09.2016

United India Insurance Company Limited *Appellant*

Versus

Priya and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 13533 CII of 2016

Prayer in this application is for condoning delay of 14 days in
filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit of Shri J S Khera, Manager of the appellant, the application is
allowed and delay of 14 days in filing the appeal stands condoned.

Main case

The present appeal has been directed against award dated
23.02.2016 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib
(in short, 'the Tribunal') whereby compensation has been awarded in favour
of Priya and others in regard to death of Yadvinder Pal in a motor vehicular
accident that took place on 12.08.2015 but the injured victim passed away
on 17.08.2015.

The sole submission made by counsel for the appellant is that with regard to occurrence in question, DDR No. 22 dated 17.08.2015 was recorded at the instance of Hatinder Pal, brother of deceased Yadvinder Pal who alleged himself to be driver of motorcycle No. PB-11-X-2605 on which Yadvinder Pal was travelling as a pillion rider. In the first version given by Hatinder Pal, he has clearly mentioned that the accident occurred due to two bulls fighting on road and for that reason, he went towards left side for the purpose of safety and a Swift Dezire Car colour Silver came from front side turned towards right hand side for the purpose of safety from bulls which struck their motor cycle, due to which, they along with motor cycle fell on the road. He fell down on katcha space and his brother had fallen down on the road resultantly suffered a serious head injury. He further stated that the accident had occurred naturally and no body was responsible for the same. It is further argued that later after one month, Hatinder Pal came out with a different story that accident was the result of rash and negligent driving of aforesaid Swift Dezire Car that led to registration of FIR No. 107 dated 19.10.2015 under sections 279/304A/427 of Indian Penal Code. It is vehemently argued that in view of first version given by Hatinder Pal, the story propounded by Hatinder Pal later is the result of concoction with a view to extract compensation from the driver, owner and insurer of the alleged offending vehicle.

I have heard counsel for the appellant, perused the paper book, statement of Hatinder Pal and the award impugned.

Hatinder Pal lodged the DDR but raised a plea that he submitted an application dated 07.09.2015 against DDR as the police has not correctly recorded his version. On the basis of application submitted by

Hatinder Pal, investigation was conducted by the DSP Nabha and on completion of investigation, challan has been presented in the Court for trial against driver of the alleged offending vehicle i.e. Swift Dezire Car. Hatinder Pal was cross examined by counsel for the insurance company but nothing material and tangible has been elicited to discard/disbelieve his testimony or impeach his credibility.

Keeping in view the facts deposed by Hatinder Pal by way of affidavit Ex.PW2/A coupled with the facts brought on record during his cross examination, it is difficult to accept that the first version recorded in DDR should invite preference/primacy over testimony of Hatinder Pal recorded in the Court particularly in the circumstance that on the application filed by Hatinder Pal expressing his grievance against incorrect recording of DDR, due investigation was conducted by DSP Nabha on the basis whereof, driver of the alleged offending vehicle has been found to be prima facie liable for causing accident and the proceedings are pending before the Court in regard to culpability of the defaulting driver. In this view of the matter, I do not find any error much less illegality in the findings by the Tribunal answering issue No. 1 against the respondents therein and in favour of the claimants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

14.09.2016
mohan bimbira

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