

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

**FAO No.6419 of 2016 (O&M)
Decided on: 04.11.2016**

United India Insurance Company Limited

....Appellant

Versus

Sahil Garg and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ravinder Arora, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the award dated 16.07.2016 passed by the Motor Accidents Claims Tribunal, Bathinda whereby compensation has been awarded in favour of injured-victim – Sahil Garg in respect of injuries sustained by him in a motor vehicular accident that took place on 07.09.2013 at 07:30 a.m. at Balmiki Chowk near Sports Stadium, Bathinda.

Counsel for the appellant has submitted that information to the police regarding the occurrence was given after 23 days of the alleged accident and the same was recorded in the Daily Diary Register on the basis of statement of Sahil Garg. In the first information given to the police, claimant had stated that there had been no negligence on the part of the motorcyclist but the accident was inevitable on account of a cow crossing the road. However, when Sahil Garg appeared in the witness-box, he resiled from his earlier version, therefore, testimony of Sahil Garg cannot form the basis to record a finding that the occurrence took place due to rash and negligent driving of motorcycle No.PB03-T-

3092 by Anoop Kumar.

I have heard counsel for the appellant and perused the paperbook particularly the award passed by the Tribunal.

Counsel for the appellant has not disputed that Sahil Garg when appeared in the witness-box has supported his plea set up in the claim petition. The learned Tribunal in para 11 of the award has noticed judgment of this Court "Bansi and another vs Vikas", FAO No.7213 of 2010 decided on 29.08.2012 wherein this Court has observed, reads thus:-

"When the claimant had originally stated that there had been no negligence on the part of the motorcyclist and that the accident was inevitable on account of a cow crossing the road and later he resiled from such a statement, I have no reason to suspect that he was speaking any untruth before the Court. A person who so drives his motorcycle that would result in dashing against a tree when a cow was crossing, cannot be an act of careful driving. By the very nature of things, a motorcyclist dashing against a tree when a cow was crossing the road, ought to be stated to be guilty of negligent driving. If the claimant was making a statement initially that there was no negligent on the part of the motorcyclist but later he made a different statement to sustain his claim, it was perfectly justified that he made a re-assessment of his own judgment of what caused the accident."

After taking into consideration the aforesaid observations in Bansi and another's case (supra), the Tribunal has held in para 12 that it was expected from respondent No.1 to drive his motorcycle in a sober and vigilant manner. Even if a stray cattle had incidentally come across

his vehicle but even then presence of stray animal on the road could not have been so sudden, so as to warn the driver of the impending collision. When the vehicle was being driven in the city and not on a streaming highway where an animal's presence is unexpected, so the respondent No.1 has failed to exercise care and caution and negligent driving on his part is established. It has further been noticed that respondent No.1 did not bother to enter the witness-box despite the fact that he had earlier appeared in the Court meaning thereby that there is no rebuttal on his behalf qua the allegations of rash and negligent driving against him. Counsel for the appellant has not disputed the observations made by this Court in *Bansi and another's case (supra)*. Keeping in view the evidence on record when analyzed in the light of observations noticed hereinbefore coupled with the factum that driver of the offending vehicle did not appear as a witness to counter case of the claimant, I do not find any reason to interfere in the findings recorded by the Tribunal attributing rashness and negligence to driver of the offending vehicle.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed *in limine*.

04.11.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No