

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

**FAO No.2792 of 2013 (O&M)
Date of Decision: 10.11.2017**

United India Insurance Company Ltd.

...Appellant(s)

Versus

Manjeet Kaur and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant.

Mr. Satbir Gill, Advocate
for respondent No.1.

ANITA CHAUDHRY, J.

This appeal is filed by the Insurance Company aggrieved by the award dated 23.02.2013 passed by the Motor Accident Claims Tribunal, Sirsa.

A petition under Section 163-A of the Motor Vehicle Act was filed pleading that deceased Major Singh along with one Jaswant Singh were going on a motorcycle on 13.08.2007 and a jeep came from the opposite direction driven by respondent No.1 and it struck against the motorcycle. Major Singh was admitted in the Civil Hospital by Jaswant Singh. The matter was reported to the Police and consequent upon his death, Section 304-A IPC was added.

Respondent No.1 denied the accident and it was pleaded that trial had ended in acquittal.

The Insurance Company took the plea that FIR was against an unknown vehicle and unknown person.

The Tribunal gave a finding in favour of the claimants holding that the driver had been challaned and the matter was investigated by an independent investigating agency and the mere fact that Jaswant Singh author of the FIR had resiled in the criminal trial, was not enough and his testimony could not be shaken in the cross-examination by the respondent. It was held that claimants had been able to prove that the accident had occurred during the use of the vehicle and that alone was enough to burden the insurance company.

The submission on behalf of the appellant is that the FIR was against an unknown vehicle and unknown person and they had led evidence to show that the author of the FIR namely, Jaswant Singh, had made contradictory statements before two Courts and he was not a reliable witness and there was no evidence as to who had provided the information to the police about the vehicle and this fact does not come out in the statement of Jaswant Singh.

Counsel for the Insurance Company was candid to admit that counsel did not confront Jaswant Singh with the FIR and pertinent questions which should have been put to him were not put. It was urged that the Tribunal had failed to notice the fact that though it was pleaded in the written statement and finds a reference in the judgment, the Tribunal has not touched that aspect.

Merely because the trial had ended in acquittal, is not sufficient. The Tribunal has to independently examine the evidence led before it and merely because challan had been presented is not

enough. In a petition filed under Section 163-A of Motor Vehicles Act, negligence is not to be proved. But merely because the challan was filed is not enough in the given facts.

The copy of the FIR as well as copy of the report under Section 173 Cr.P.C. are available on the Lower Court record. On going through the contents of the report prepared under Section 173 Cr.P.C., it is found that the police had submitted the challan without giving a conclusive report as to how the driver was involved. It was the duty of the claimants to show who had provided the details to the police. There is no evidence to show when the accused was arrested and when the vehicle were produced before the police and by whom. It has not been clarified by the claimants as to what was the role of Sukhinder Singh.

Jaswant Singh, author of the FIR, had not given the details of the vehicle. The FIR was against unknown vehicle and person. Before the criminal Court, he could not identify the driver, he could not give the details of the vehicle. Such a witness could not have been believed. The claimants had failed to prove that the driver or the vehicle was involved in this accident. The finding recorded by the Tribunal is set aside. The claim petition is dismissed.

The appeal is allowed.

November 10, 2017

ps-/

Whether Reasoned/Speaking

Whether Reportable

**(ANITA CHAUDHRY)
JUDGE**

Yes/No

Yes/No