

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

FAO No. 5073 of 2017(O&M)

Date of decision: 22.8.2017

Oriental Insurance Co. Ltd.

....Appellant

VERSUS

Sandeep Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Yadav, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

The present appeal directs challenge against award dated 18.04.2017 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Parwinder Singh in a motor vehicular accident that took place on 22.10.2016.

Counsel for the appellant-insurance company has fairly informed that the appeal has been preferred to assail findings of the Tribunal on issue No.1 whereby rashness and negligence in causing the accident while driving motorcycle No.PB-23-U-4144 has been attributed to Major Singh- respondent No.6. It is argued that as per plea of the claimants/respondents, Parwinder Singh – deceased was travelling as a pillion rider on motorcycle driven by Major Singh. It is argued that Major Singh lodged DDR Ex.C2 wherein he had categorically recorded that a stray cattle came in front of them, he applied brakes but could not control

the motorcycle due to which both the occupants fell down and sustained injuries. It is further argued that DDR lodged at the behest of Major Singh has been relied upon by the claimants themselves, therefore, findings of the Tribunal on issue No.1 upholding plea of the claimants cannot be allowed to sustain and liable to be set aside.

Another submission made by counsel is that the claimants did not lodge any FIR or filed a criminal complaint against Major Singh for causing accident due to his rash and negligent driving constituting criminality, punishable in law. The claimants introduced one Surmukh Singh to be an eye-witness to the occurrence but his testimony cannot be relied upon as he neither reported the matter to the police nor raised objection against lodging of DDR Ex.C2 by Major Singh despite admitting that Ex.C2 was prepared in his presence. In support of his contentions, he has relied upon judgment of this Court, **Krishna Devi Vs. Krishan Chand and another, 2017(1) PLR 777**. Further reference has been made to judgment of Himachal Pradesh High Court **Nagender Kumar Vs. Nitu and others, 2016 AAC 2045**.

I have heard counsel for the appellant, perused the paper-book particularly the award and attested copies of statements of Surmukh Singh CW2 and Major Singh RW1 examined before the Tribunal.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to deal with judgments cited at bar. In **Krishna Devi's case** (supra), application for compensation filed by the claimant for grant of compensation on account of injuries sustained in accident on 20.10.2007 was dismissed by the Tribunal on the premise that the claimant

failed to establish rashness or negligence on the part of motorcyclist. The finding recorded by the Tribunal was affirmed by this Court in view of first version of the claimant recorded by the police that occurrence was accidental as well as her version given in the affidavit tendered into evidence wherein she had not specifically attributed any negligence to respondent and also stated that occurrence was purely accidental. Counsel for the appellant has failed to draw any similarity between the facts of the case in hand and that of the referred authority, therefore, he cannot derive any advantage to his contention from what has been held in **Krishna Devi's case** (supra) in view of peculiar facts and circumstances of the said case.

In **Nagender Kumar's case** (supra), decided by the Himachal Pradesh High Court, the claimant was in appeal against the award by the Tribunal whereby the claim petition was dismissed. In para 5 of the judgment it has been noticed that after scanning the pleadings of the parties and the evidence led, the Tribunal held that the claimant failed to prove that the accident was the outcome of rash and negligent driving of driver of the car. There is no detailed reference to the facts of the case or the evidence adduced by the claimant to prove his plea of rash and negligent driving by the driver of offending vehicle. The Court in view of its observations recorded in para 7 and 8 of the judgment upheld findings of the Tribunal. In para 7, it has been held that there is not an iota of evidence on record to prima facie prove that the accident was the outcome of rash and negligent driving of the driver, who was driving the car. Even no FIR has been registered in regard to the accident. On the last date of

hearing, learned counsel for the appellant/claimant was asked to produce any prescription slip or medical record, which may suggest that the claimant sustained injuries in the accident and remained under treatment for the same. Today, learned counsel for the appellant stated that the appellant is not in a position to produce any such document. In view of peculiar facts and circumstances taken note of by the High Court, appeal preferred by the claimant was dismissed.

Reverting to the case at hand, DDR Ex.C2 was recorded by Major Singh driver of the offending vehicle, therefore, Major Singh had every reason to record such facts so that he should be in a position to escape his liability both criminal and civil. The DDR was not registered at the behest of the claimant or an eye-witness to the occurrence examined in the case. Under the circumstances, no such contention can be raised by the appellant that there is contradiction in the first version given by the claimants much less by the eye-witness vis-a-vis the version brought-forth before the Tribunal in the petition as well as in the statement of Surmukh Singh CW-2.

Surmukh Singh CW2 appeared in the witness box and tendered into evidence his affidavit Ex.CW2/A. He has categorically deposed that when Major Singh and Parwinder Singh riders of motorcycle bearing No.PB-23-U-4144 reached near Desh Bhagat University, a stray cattle came in front of the motorcycle. As the motorcycle was driven at a high speed and on account of rash and negligent driving of motorcycle, respondent No.1 could not control the motorcycle by applying brakes and both occupants of the motorcycle fell down on the road and Parwinder

Singh received multiple injuries on the head. The witness was cross examined by both the sets of respondents but nothing tangible and material has been brought-forth to create a suspicion regarding presence of Surmukh Singh at the spot or his testimony otherwise being not worthy of credence or reliance. In his cross examination by counsel representing the insurance company before the Tribunal, he has denied the suggestion that there was no negligence on the part of respondent No.1 for causing the accident and added voluntarily that accident had taken place on account of hitting of motorcycle with the stray cattle by respondent No.1 and the same could have been avoided if the motorcycle was driven at moderate and controlled speed. The mere fact that Surmukh Singh did not put efforts to ensure that a criminal case is registered against Major Singh or did not raise protest against lodging of DDR Ex.C2 by Major Singh is not sufficient to discard or disbelieve testimony of Surmukh Singh. There is nothing on record suggestive of the fact that Surmukh Singh has any relationship with the claimants in order to depose falsely to support cause of the claimants. If Surmukh Singh had shown indifferent attitude and failed to initiate criminal proceedings against Major Singh, it does not constitute a good ground to uphold plea of the appellant that Surmukh Singh is not a truthful witness or his testimony is liable to be discarded in view of DDR Ex.C2 recorded by Major Singh, driver of the motorcycle. In this view of the mater, I do not find any error much less illegality in findings of the Tribunal upholding plea of the claimants/respondents that the accident took place due to rash and negligent driving of motorcycle by

Major Singh on which deceased Parvinder Singh was travelling as a pillion rider.

No other point has been raised.

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

AUGUST 22, 2017		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no