

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

FAO No.5486 of 2017 (O&M)

Date of Decision: August 24, 2017

United India Insurance Co. Ltd.

...Appellant

Versus

Baljit Kaur and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Harsh Aggarwal, Advocate for the appellant – Insurer.

HARINDER SINGH SIDHU, J.

On 5.6.2016, Dalbara Singh, aged 52 years, was returning to his village Sultanpura Channa from Sangrur in his Alto Car No.PB-11AP-4501. He was driving the car on the correct side at normal speed and was followed by Joginder Singh son of Gurnam Singh in his separate Varito car No.PB-11AX-3107. At about 12.30 P.M., when they reached near water tank of village Roshanwala, one Indigo car bearing No.PB-11BB-4452 came from Bhawanigarh side, driven by Gurtek Singh – respondent No.3. The Indigo car was being driven in a rash and negligent manner due to which it came to the wrong side and struck against the car of Dalbara Singh. The occupants of both the vehicles suffered injuries and damage was caused to the vehicles. Dalbara Singh was taken to Civil Hospital, Bhawanigarh, where he was declared 'brought dead'.

The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,50,000/- on account of damage to Maruti Alto Car of the deceased, wherein, the Motor Accident Claims Tribunal, Sangrur (for short 'the

Tribunal') awarded compensation of Rs.1,05,000/- along with interest to them, payable by the insurer – appellant.

Challenging the impugned award, Ld. counsel for the appellant-Insurance Company has contended that the Tribunal fell in error by not treating it to be a case of contributory negligence. It is also contended that the driver of the offending car was not holding a valid driving licence as his licence authorised him to drive 'Light Motor Vehicle', but the Indigo car was registered as 'Light Passenger Carriage Vehicle' and was being plied as taxi.

I have heard Ld. Counsel for the appellant and gone through the paper-book with his assistance. I find no ground to interfere in the impugned award.

The Tribunal had framed the following issues for adjudication:-

- “1. Whether Alto car bearing registration No.PB-11AP-4501 was damaged in an accident which took place on 05.06.2016 due to rash and negligent driving of respondent No.1 by driving TATA Indigo car bearing registration No.PB-11-BB-4452? OPA
2. Whether the claimants are entitled to receive compensation, if so to what amount and from whom? OPA
3. Whether the petition is not maintainable in the present form? OPR
4. Whether respondent No.1 was not holding valid and effective driving licence and other documents at the time of accident? OPR-3
5. Relief.”

The issue of negligence was covered under issue No.1 and while adjudicating the same, the Tribunal considered the evidence of eye witness

that on 5.6.2016, Dalbara Singh (deceased) was going from Sangrur to his village Sultanpura Channa in Alto car bearing Reg.No.PB-11AP-4501, which was driven by him on the correct side of the road at normal speed. The witness further explained that he was following the car of the deceased in his own car bearing Reg.No.PB-11AX-3107 and at about 12.30 P.M., when they reached near water tank of village Roshanwala, the offending car came from the side of Bhawanigarh driven by Gurtek Singh -respondent No.3 in a rash and negligent manner and hit the car of Dalbara Singh. It was further stated that Dalbara Singh suffered grievous injuries in the accident as also the occupants of the offending car. They were shifted to Civil Hospital, Bhawanigarh by calling 108 Ambulance. It was specifically stated by CW-3 that the accident was caused due to rash and negligent driving by respondent No.3. FIR No.80 dated 5.6.2016 under Sections 304-A, 279 and 427 IPC (Exhibit C10) was registered in Police Station Sadar Sangrur on his statement. The above evidence of eye witness Joginder Singh (CW-3) remained unrebutted as Gurtek Singh – respondent No.3, driver of the offending car even did not step into the witness box. It was in the light of the evidence of CW-3 Joginder Singh, registration of FIR (Exhibit C10) and non-appearance of Gurtek Singh – respondent No.3, driver of the offending car, that the Tribunal returned a finding holding that the accident was caused by rash and negligent driving of Indigo car bearing Reg.No.PB-11-BB-4452, deciding issue No.1 in favour of the claimants.

Issue No.4 was framed about the validity of the driving licence of the driver and other documents of the offending car. The onus to prove this issue was upon the insurer of the offending vehicle i.e. the appellant, herein.

Copies of the driving licence of Gurtek Singh – respondent No.3, the insurance policy, the pollution certificate and the Registration Certificate of the offending car No.PB-11-BB-4452 were placed on record as Exhibits R1, R2, R3 and Mark-A. On the other side, the appellant – respondent Insurer did not lead any evidence to substantiate its plea.

The argument of the Ld. Counsel for the insurer that the driver of the offending vehicle could not be said to be having a valid driving licence to drive the Indigo car which was registered as a passenger carrying vehicle, cannot sustain in view of the decision of Hon'ble the Supreme Court in **Mukund Dewangan vs. Oriental Insurance Company Limited 2017 SCC OnLine SC 788**, wherein, it is held that no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class.

No other point was raised.

In view of above, there is no ground to disturb the findings of the Tribunal, which are based upon proper appreciation of evidence.

Appeal is dismissed.

The statutory amount of Rs.25,000/- deposited at the time of filing of the appeal, be remitted to the Tribunal for disbursement to the claimants.

August 24, 2017

gian

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes / No
Whether Reportable	Yes / No