

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

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Date of Decision : 27.08.2018

1.

FAO No.4352 of 2011 (O&M)

Sukhdev Singh Bhandal

..... Appellant

Versus

Balbir Kaur @ Beero and others

..... Respondents

2.

FAO No.2892 of 2012 (O&M)

ICICI Lombard General Insurance Co. Ltd.,

..... Appellant

Versus

Balbir Kaur @ Beero and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashu M.Punchhi, Advocate
for the appellant (FAO No.4352 of 2011)
for respondent No.3 (FAO No.2892 of 2012).

Ms. Vandana Malhotra, Advocate
for the appellant (FAO No.2892 of 2012)
for respondent No.3 (FAO No.4352 of 2011)

Mr. Rakesh Kumar, Advocate
for respondents No.1 & 2 in both cases.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals. As
common question of facts and law are involved the facts are being taken
from FAO No.4352 of 2011.

These two appeals have been filed against the award of the Motor Accident Claims Tribunal, Kapurthala awarding a sum of Rs.3,30,000/- for the death of Manjit Singh @ Gora.

The brief facts are that on 14.02.2009 Manjit Singh @ Gora was going from his village when at about 9.00 AM the Innova Car bearing No.PB09-J-1074 owned and driven by Sukhdev Singh Bhandal and insured by ICICI Lombard General Insurance Co. Ltd., struck against his motor cycle bearing No.PB-09-E-9013 and as a result of the same he died. He was being followed by his cousin Gurnam Singh, who lodged an FIR against the unknown vehicle. More than 1 ½ months later on 24.03.2009 the father of the deceased (respondent-Swaran Singh) moved an application to the police stating that he had 'now come to know that the accident in question had been caused by Sukhdev Singh Bhandal while driving his Innova bearing No.PB09-J-1074'. In the written statement the case of Sukhdev Singh Bhandal was that no such accident had taken place with his vehicle. The Tribunal having negated this plea and ordered compensation, these appeals have been filed.

Learned counsel for the appellant has argued that actually no accident had taken place with the vehicle of the appellant-Sukhdev Singh Bhandal and his vehicle had been wrongly involved. He points out that Gurnam Singh, the alleged eye witness had lodged an FIR against the unknown vehicle and when the father-Swaran Singh moved an application after 01 month and 10 days he did not disclose from where he had come to know that infact the accident had taken place with the vehicle of the appellant. Not only that even when he appeared to give his testimony in the

but did not disclose from where he had come to know that actually it was the vehicle of the appellant-Sukhdev Singh Bhandal which was involved in the accident. As per the learned counsel for the appellant the tribunal has completely glossed over this material fact.

Counsel for respondents No.1 & 2-claimants has argued that at one place in his cross examination-Sukhdev Singh Bhandal had stated as follows :-

'It is correct that an application was moved by Swaran Singh to the SSP when they came to know that my vehicle had struck with the motor cycle. '

As per learned counsel for respondents No.1 & 2-claimants claimants this is a clear admission on the part of the appellant.

Learned counsel for the appellant-Sukhdev Singh Bhandal has however countered by drawing the attention of the Court to the entire cross-examination and the examination-in-chief of Sukhdev Singh Bhandal where his consistent case was that no accident had taken place with his vehicle. Learned counsel for the appellant-Sukhdev Singh Bhandal states that a reading of the entire deposition clearly reveals that there is no admission by Sukhdev Singh Bhandal.

Having gone through the testimony, I have come to the conclusion that the arguments of the learned counsel for the appellant are valid. There is no explanation even today as to from where Swaran Singh-respondent No.2 came to know that the accident had taken place with the vehicle of Sukhdev Singh Bhandal. This so called admission would also not help the case of the claimants because it is for the claimants to have proved their case by leading positive evidence which was not led in the

In the circumstances, the appeal filed by the appellant stands allowed and the award is set aside. Since the appeal of the owner has been allowed the necessary corollary is that the appeal of the insurance company also stands allowed. In case the amount/s has been deposited by the appellant, the same be refunded to him. The insurance company would also be entitled to recover whatever amount they have paid to respondents No.1 & 2-claimants.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

27.08.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No