

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

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FAO 7158 of 2011 (O&M)
Date of decision: 06.07.2018

United India Insurance Company Limited *Appellant*

Versus

Sunita and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sanjiv Pabbi, Advocate
for the appellant

Mr. Rajbir Singh, Advocate
guardian ad litem for respondents No. 2 to 7

Ms Rajni, Advocate
for respondent No. 8

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 08.08.2011 passed by the Motor Accidents Claims Tribunal, Ropar (hereinafter to be referred as 'the Tribunal') whereby compensation has been assessed on account of death of Vinod Kumar in a motor vehicular accident that took place on 10.01.2009.

Counsel for the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the FIR was lodged at the behest of Tarlochan Singh (PW1) against an unknown vehicle but later the alleged offending vehicle has been indicted in the accident to extract compensation from the insurance company. The second submission made by counsel is that as the vehicle was being used for

commercial purpose, the insured is guilty of violating terms and conditions of insurance policy which entitles the insurance company to seek exoneration or right of recovery against the insured after payment of compensation to the claimants, if the insurance company is so held liable.

Counsel representing the claimants (appointed as guardian ad litem for the minors - respondents No. 2 to 7) has supported the award particularly findings of the Tribunal on issue No. 1 and so also liability of the insurance company to pay compensation by way of indemnification of the insured in discharge of obligation under the contract of insurance.

Counsel representing respondent No. 8 has not made any submission.

I have heard counsel for the parties and perused the paper book particularly the award.

The Tribunal framed issue No.1 to the following effect:-

Whether Vinod Kumar died in a vehicular road side accident caused by respondent No. 1 while driving TATA SUMO No. CH 03 C 2136 in a rash and negligent manner?OPP

To discharge onus of issue No. 1, claimants examined Tarlochan Singh, author of the FIR (PW1) and Kulwinder Singh (PW2). In para 8 of the award, the Tribunal has adverted to the facts narrated by Kulwinder Singh as to how the accident in question took place because of rash and negligent driving of offending vehicle by its driver, Sher Jang when Kulwinder Singh along with his family was travelling in the offending vehicle on his way to Chandigarh to attend a marriage function. Counsel for the insurance company has failed to point out any tangible fact elicited during cross examination of Kulwinder Sinigh (PW2) to create a slightest

doubt with regard to his presence at the spot or demolish his credibility/veracity. There is nothing on record suggestive of the fact that Kulwinder Singh is related to claimants much less he being a beneficiary in case compensation is allowed. The insurance company has failed to bring any material on record that offending vehicle has been planted in the case on account of collusion between claimants and owner of the vehicle. In this manner, I do not find any reason to interfere in the findings of the Tribunal, determining issue No. 1 in favour of claimants and against the respondents

This brings the Court to the second submission with regard to vehicle being used for commercial purpose. No such plea was raised by the insurance company in the written statement nor any issue in this regard has been framed. The mere fact that Kulwinder Singh had stated that the vehicle was hired is not sufficient to substantiate factual plea raised for the first time that the vehicle in question was being used for hire or reward. In this view of the matter, the insurance company cannot be heard to say that the vehicle was being used for commercial purpose or insured is guilty of violating terms and conditions of the insurance policy.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

06.07.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No