IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1484 of 2018(O&M)

Date of decision: 28.5.2018

HDFC Ergo General Insurance Co. Ltd. …..Appellant

VERSUS

Dalbir Singh and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pradeep Kumar, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

CM No.7421-CII of 2018

Heard.

Allowed as prayed for.

Annexures A-1 and A-2 are taken on record subject to just exceptions.

Disposed of accordingly.

FAO No.1484 of 2018

The present appeal directs challenge against award dated 13.11.2017 passed by Motor Accidents Claims Tribunal, Fatehabad (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Dalbir Singh in a motor vehicular accident that took place on 22.11.2015.

The first submission made by counsel for the insurance company is that in the criminal trial faced by Sunil Kumar @ Sonu, driver of offending motorcycle bearing No.HR-22K-0705, the driver has been acquitted of the offence vide judgment dated 31.08.2017 (Annexure A-1) and the same has been marked as Ex.R3 before the Tribunal. Dalbir Singh – injured tendered into evidence his affidavit Ex.PW1/A by way of examination in chief in September 2017 wherein he wrongly recorded the factum of pendency of trial against the driver when as a matter of fact the driver had already been acquitted of the offence vide judgment dated 31.08.2017. The Tribunal has also mentioned in para 10 of the award that a case for rash and negligent driving was registered against respondent No.1 and a charge-sheet was filed in which he is facing trial despite the fact that judgment of acquittal was already a part of records of the Tribunal. In addition, it is argued that EHC Subhash Chander who lodged the FIR did not appear before the Tribunal to corroborate version of EASI Dalbir Singh (claimant) and before the criminal Court, he failed to connect accused with the crime, therefore, findings of the Tribunal on issue No.1 are liable to be set aside.

Another submission made by counsel is that the policy in question relied upon by the insured is fake and the insurance company has wrongly been fastened with liability to pay compensation.

I have heard counsel for the appellant, perused the paper-book particularly the award.

Counsel for the appellant has placed on record copy of the judgment passed by the criminal Court whereby Sunil @ Sonu was acquitted of the offence charged against him. Perusal of Annexure A-1 would reveal that EASI Dalbir Singh – injured appeared before the criminal Court and reiterated his version with regard to accident being the result of rash and negligent driving of motorcycle Bajaj Platina No.HR-

22K-0705. Counsel for the insurance company has not referred to statement of the injured victim recorded before the criminal Court in order to say something that he has not supported cause of the prosecution or did not connect the vehicle and accused with crime. The injured victim had no means to ensure that author of the FIR would also support cause of the prosecution in the criminal proceedings. Rather, it appears that as author of the FIR was not ready to commit to his first statement made at the time of lodging of FIR, the injured did not examine him as a witness in the application for compensation. The judgment of the criminal Court was passed on 31.08.2017 and the injured appeared in the witness box on 07.09.2017. There is no material on record suggestive of the fact that the injured had been pursuing proceedings in criminal trial or he had knowledge of judgment of acquittal on the day he was examined in the present case. The Tribunal while referring to the factum of charge-sheet being filed has recorded it incorrectly that the accused is facing trial because the judgment of acquittal was already placed on record but this error is not sufficient to set aside findings on issue No.1, based upon testimony of injured Dalbir Singh coupled with that counsel for the insurance company has failed to point out any fact elicited in his cross examination to discard and disbelieve his testimony. The proceedings before the Tribunal are summary in nature and required to be decided on the basis of balance of probabilities. There is no counter to testimony of Dalbir Singh by respondent Sunil Kumar @ Sonu, driver of the offending vehicle who did not appear in the witness box to record his testimony on oath. In this view of the matter, I do not find an error much less illegality in conclusions drawn by the Tribunal upholding plea of the claimant that accident is the result of rash and negligent driving of offending vehicle by Sunil Kumar @ Sonu.

So far as the plea that the policy is fake, indisputably, no such controversy was raised before the Tribunal nor any evidence in this regard was adduced. The insurance company has not filed an application for amendment of the written statement to raise any such plea of policy being fake. In the given scenario, the appellant cannot derive any advantage to its contention by raising such a factual controversy for the first time during the course of hearing of appeal.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

MAY 28, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no