

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

FAO No.27 of 2018 (O&M)

Date of Decision:19.01.2018

National Insurance Company Ltd.Appellant

vs.

Neeraj Sachdeva and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. I.P.S. Issar, Advocate for
the caveator- respondents.

Ramendra Jain (Oral)

1. The Insurance Company in the instant appeal has laid challenge to the impugned award of the Motor Accidental Claim Tribunal, Chandigarh (for short, 'the Tribunal') dated 01.09.2017 on the ground that there was conflicting evidence on behalf of the respondents- claimant in this case, contrary to evidence led in two other claim petitions pertaining to the same very accident filed by legal heirs of the deceased Nitin Kumar and Sunil Kumar at Sri Muktsar Sahib (Punjab) qua the driver of the offending car and his negligence. The Tribunal below ought to have dismissed the claim petition of the respondents- claimant as has been done by the Tribunal at Sri Muktsar Sahib. According to respondents- claimant before the Tribunal at Chandigarh, deceased Nitin Kumar was driving the offending vehicle, contrary to the stand of the legal heirs of Nitin Kumar in their claim petition filed at Sri Muktsar Sahib that deceased Sunil Kumar at the relevant time was driving the offending vehicle. Further, contrary to it, in the claim petition filed by legal heirs of Sunil Kumar, they claimed that Nitin Kumar was driving the offending vehicle, therefore, in the absence of any definite evidence qua driver of the offending car and his negligence who out of the

five deceased – occupants was responsible for causing the impugned accident, the claim petition under Section 166 of the Motor Vehicle Act of the respondents - claimant was liable to be rejected outrightly by the Tribunal below.

2. On the other hand, learned counsel for the respondent-claimants – caveators refuting the above submissions of learned counsel for the Insurance Company pleaded the legality and validity of the impugned award.

3. Having given considerable thought to the submissions made by both the sides, I find the instant appeal completely devoid of any merit for the reasons to follow:-

4. Undisputedly, five persons, namely, Nitin Kumar, Sandeep Singh, Sunil Kumar, Prem Saharan and Mohammad Wasim while travelling from Panchkula to Shimla in a Swift car bearing Registration No.PB-30-N-3075 met with an accident on the way near Sonu Bangla Road, NH-22. None of the occupants survived, therefore, there was no eye witness account to the accident in question. Out of five deceased, the legal heirs of three of them filed their respective claim petitions i.e. one at Chandigarh and two at Sri Muktsar Sahib.

5. According to the claim petition of the respondent- Claimants at Chandigarh, accident had occurred on account of rash and negligent driving of the deceased Nitin Kumar.

6. Similarly, legal heirs of deceased Sunil Kumar in their claim petition filed at Sri Muktsar Sahib pleaded negligence of Nitin Kumar. But contrary to the above stand, the legal heirs of Nitin Kumar in their claim petition at Sri Muktsar Sahib pleaded that deceased Sunil Kumar was

driving the vehicle in question in a rash and negligent manner, therefore, he was responsible for causing the impugned accident.

7. The Tribunal at Sri Muktsar Sahib dismissed both the claim petitions filed by legal heirs of Nitin Kumar and Sunil Kumar on the ground that since there was contrary stand of both of them as to who was responsible for causing the impugned accident, therefore, they were not entitled to any compensation.

8. Whereas the Tribunal at Chandigarh accepted the claim petition of the respondent- claimants believing their version that the accident had occurred on account of rash and negligent driving of deceased Nitin Kumar.

9. In the considered opinion of this Court, since all the occupants in the car had expired and there was no eye witness account, therefore, it had become irrelevant as to who was driving the car and on whose negligence the accident in question took place, more particularly, when admittedly the offending vehicle was comprehensively insured. Therefore, from any angle, the appellant- Insurance Company could not have been permitted to escape from its liability for payment of compensation to the legal heirs of the deceased.

10. It is pertinent to mention that the police on noticing the unattended accident after visiting the spot finding five bodies lying there, registered FIR bearing No.31 dated 26.01.2015 qua the accident in question showing the negligence of deceased Nitin Kumar on the basis of circumstances found at the spot. During investigation, it was found that deceased Nitin Kumar was driving the offending vehicle at the time of accident and that the same had occurred on account of his rash and negligent driving.

11. Admittedly, the police had filed closure report in the Court qua the accident in question for the simple reason that no person had survived, who could be prosecuted for his rash and negligent driving.

12. No contrary evidence to the same was led by the Insurance Company, nor obviously could have been led by it, inasmuch as no eye witness account was available.

13. Laying challenge to the impugned award by the Insurance Company in this appeal for the reason that two claim petitions filed by the legal heirs of the deceased at Sri Muktsar Sahib have been dismissed is not a genuine and valid ground, more particularly, when it could not prove before the Tribunal by leading any evidence, what to talk of any cogent and convincing that it was not Nitin Kumar who was driving the vehicle, rather it was being driven by someone else.

13. There is no reason to differ with the well reasoned finding of the learned Tribunal in the impugned award. Rather this Court feels that the Tribunal at Sri Muktsar Sahib has wrongly dismissed th claim petitions of the legal heirs of Nitin Kumar and Sunil Kumar without appreciating the fact that the driving of the offending car and his negligence had become immaterial or in other words could not been proved in the absence of any eye witness account inasmuch as all the occupants of the car admittedly had died at the spot.

14. In view of the discussion above, this petiton fails and is dismissed.

January 19, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No