

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

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FAO 2844 of 2018 (O&M)
Date of decision: 19.07.2018

Oriental Insurance Company Limited*Appellant*

Versus

Binder Kaur and others*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ashwani Talwar, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 12.01.2018 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded on account of death of Karamjit Singh in a motor vehicular accident that took place on 21.10.2016 due to rash and negligent driving of ALTO Car bearing No. CH 03X 4720.

Counsel for the insurance company-appellant has assailed findings of the Tribunal on issue No. 1 with regard to accident being the result of rash and negligent driving of offending vehicle by its driver on the premise that testimony of Dalbara Singh, author of FIR and father of deceased Karamjit Singh is not sufficient to establish version brought forth by the claimants in para 24 of the application. To bring home his contention, it is argued that in FIR No. 09 dated 22.01.2016 registered at Police Station

Mullepur, District Fatehgarh Sahib, the maker thereof has got recorded that number of offending vehicle was noted by Nirbhai Singh, another alleged eye witness to the occurrence but said Nirbhai Singh has not been examined in the case to corroborate statement of Dalbara Singh with regard to involvement of the vehicle in question.

Another submission made by counsel is that during investigation of the criminal case, lodged on the basis of aforesaid FIR, the investigating officer recorded statements of various witnesses marked as exhibits in the testimony of Baljinder Singh (DW1) and eventually, the police prepared untraced report Ex. R-18. It is further argued that the same very vehicle was involved in MACT case titled Kulwant Kaur and others vs Shyam Lal and others, decided by the Motor Accidents Claims Tribunal, Patiala vide order dated 12.07.2016, therefore, possibility of the vehicle being planted in the case to get compensation from the insurance company is not ruled out.

I have heard counsel for the appellant, perused the paper book, award impugned and copies of documents supplied by counsel particularly testimonies of Dalbara Singh (PW1) and Baljinder Singh No. 762, PS Mullepur, Fatehgarh Sahib (DW1).

Dalbara Singh lodged the FIR on the very next day of the occurrence wherein there is specific reference to registration particulars of offending vehicle i.e. ALTO Car bearing No. CH O3X 4720. Karamjit Singh son of Dalbara Singh sustained serious injuries in the occurrence that took place on 21.01.2016 at about 8/8.30 p.m.. Initially, Karamjit Singh was shifted to Hospital at Fatehgarh Sahib and thereafter he was referred to

PGI, Chandigarh and succumbed to the injuries at night time on 21.01.2016. Statement of Dalbara Singh was recorded by the Police at 11.30 a.m. on 22.01.2016. There is nothing on record suggestive of the fact that Nirmal Singh, owner of the offending vehicle was known to Dalbara Singh, prior to the occurrence. Nirmal Singh is a resident of Chandigarh and an employee of HMT, Pinjore as transpired from his statement recorded by the Police during investigation. On the otherhand, Dalbara Singh is a resident of Village Rampur Sahiwal, Police Station Bhadson, District Patiala. In his cross examination, Dalbara Singh has categorically deposed that he did not know Nirmal Singh prior to the occurrence. That being so, it is difficult to accept contention of the insurance company that the vehicle in question had been planted in order to extract compensation from the insurance company. This apart, I stand fortified in my observations from the fact that Nirmal Singh submitted an application before the Police levelling allegations that his vehicle has been wrongly involved in the occurrence and the matter needs to be investigated thoroughly. In the given circumstances, the mere fact that the same very vehicle was involved in some other MACT case is not sufficient to substantiate aforesaid plea of the appellant.

Dalbara Singh tendered into evidence his duly sworn affidavit, gave detailed account as to how the accident in question took place due to rash and negligent driving of ALTO car. He was subject to cross examination at length but counsel for the insurance company has failed to point out any tangible material brought forth to shatter evidentiary value of his testimony or impeach his credibility/ veracity. Anything stated by Dalbara Singh while recording FIR was not put to the witnesses to elicit any

contradiction in his testimony before the Court viz-a-viz first version recorded in the FIR by providing an opportunity to Dalbara Singh to explain his position in this regard. Nirmal Singh did not appear in the witness box to counter case of claimants or rebut evidence of Dalbara Singh that vehicle in question was not involved in the occurrence.

So far as statement of Baljinder Singh (official from Police Station Mullepur, Fatehgarh Sahib) is concerned, he has admitted in his cross examination that untraced case has been recommended by the police but the same is pending in the office of SSP. Meaning thereby that untraced report is still pending before the police authorities much less being presented in the Court and accepted. Under the circumstances, the appellant cannot derive any advantage to his contention from the factum of untraced report being prepared by the police. In this view of the matter, I find myself unable to be persuaded with the submissions made by counsel for the appellant that findings recorded by the Tribunal on issue No. 1 suffer from an error much less illegality, warranting intervention.

No other point has been raised.

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

(Rekha Mittal)
Judge

19.07.2018
mohan bimbira

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