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

FAO No. 304 of 2018(O&M)

Date of decision: 26.3.2018

Reliance General Insurance Co. Ltd. ….Appellant

VERSUS

Saroj Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 08.12.2017 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby compensation has been awarded on account of death of Tirlok Singh in a motor vehicular accident that took place on 04.12.2014.

Counsel for the appellant has challenged findings of the Tribunal on issue No.1 whereby it has been held that occurrence took place due to rash and negligent driving of Tractor No.RJ31RA/9506 by Satpal Singh son of Ganga Ram, resident of village Rajpuria. It is argued with vehemence that in the instant case, FIR with regard to the occurrence was lodged by Ram Niwas son of Jai Singh and in the FIR, it has been specifically mentioned that the offending vehicle was driven by Mange Ram. During the course of investigation, name of the driver has been changed from Mange Ram to Satpal Singh as has been brought forth in the testimony of ASI Raghubir Singh RW-1 (Annexure A-2) examined by the insurance company. It is argued with vehemence that the fact that name of the driver has been changed later is sufficient to create a doubt in the story brought forth by the claimants and so also testimony of Ram Niwas, alleged eye-witness to the occurrence examined to prove issue No.1, onus whereof was placed upon the claimants.

Another submission made by counsel is that the Tribunal has awarded interest at the rate of 9% per annum but the bank rate at the relevant time was less than 9%.

I have heard counsel for the appellant, perused the paper-book particularly the award and testimonies of Ram Niwas PW-2 and ASI Raghubir Singh RW-1. Ram Niwas, author of the FIR has specifically mentioned that after causing the accident, the tractor driver stopped at some distance and then ran away after leaving the tractor at the spot. There is nothing on record suggestive of the fact that Ram Niwas knew Mange Ram prior to the occurrence, therefore, he could not commit any mistake in establishing identity of the driver at the time of lodging of FIR. ASI Raghubir Singh in his cross examination has categorically deposed that he had gone to village Chananwas but there was no person in the name of Mange Ram in the said village. Indisputably, neither Sarabjit Singh owner of the offending tractor nor Satpal Singh appeared in the witness box to say on oath that Satpal Singh was not the driver on the tractor in question on the day of occurrence. Sarabjit Singh and Satpal were the best persons to depose as to who was driver of the offending vehicle on the day of occurrence. As they have withheld themselves from the witness box without any tangible explanation, an adverse inference is liable to be drawn against them. This apart, Satpal Singh and Sarabjit were under an obligation in law to depose about the special circumstances to their knowledge in view of the provisions of Section 106 of the Indian Evidence Act, 1872. Analysed from any angle, contention raised by counsel for the insurance company with regard to changing name of the driver for some ulterior reason is not meritorious and liable to be rejected.

So far as plea with regard to payment of interest at the rate of 9% per annum, counsel has not placed on record any document with regard to prevalent bank rate. However, award of interest at the rate of 9% per annum has been affirmed by Hon'ble the Supreme Court in **Sandhya Rani Debbarma and others Vs. National Insurance Co. Ltd. and another, 2016(4) RCR (Civil) 465**.

No other point has been raised.

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

MARCH 26, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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