

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

**FAO-3787-2018 (O&M)
Date of decision:09.07.2018**

MAGMA HDI General Insurance Co. Ltd. ... Appellant

Vs.

Nirmala Devi & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Ms. Sheenu Sura, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Appellant Insurance Company has filed the instant appeal assailing the award dated 07.04.2018 passed by the learned Motor Accident Claims Tribunal, Ambala and whereby compensation to the extent of Rs.16,56,000/- was awarded in favour of the claimants on account of death of Gurpreet in a motor vehicle accident.

2. Brief facts would require notice at the very outset. Claimants namely, Nirmala Devi, Rati Ram and Sachin Pal filed claim petition under Section 166 of the Motor Vehicle Act and the case set out was that on 08.04.2016, Gurpreet (since deceased) along with his uncle Jarnail was proceeding on foot from Ambala chowk to bus stand Naraingarh and at about 1:10 P.M., a tractor trolley bearing Engine No.4100EL63C543468F16 and Chasis No.AZZDF54809953 came from behind being driven in a rash and negligent manner and ran over Gurpreet. Gurpreet is stated to have suffered grievous and multiple injuries and was shifted to a hospital at Naraingarh and was declared dead. Matter was reported to police and FIR was registered on the same very day i.e. on 08.04.2016 on a complaint

made by Jarnail i.e. uncle of the deceased. The claimants afore noticed were the parents and brother respectively of deceased Gurpreet.

3. On the pleadings of the parties, the following issues were framed by the Tribunal:

- 1. Whether the accident in question causing death of Gurpreet took place due to rash and negligent driving of Tractor bearing Engine No.4100EL63C543468F16 Chasis No.AZZDF54809953 by respondent No.1, as alleged? OPP*
- 2. If issue No.1 is proved, then to what amount of compensation the claimants are entitled to and from whom? OPP*
- 3. Whether the Insurance Company is not liable to pay any compensation, in view of the preliminary objections raised in the written statement and whether there has been a breach of terms and conditions of the policy of the insurance? OPR-3.*
- 4. Relief.*

4. Since counsel representing the appellant/Insurance Company has raised the solitary contention as regards false implication, this Court would be adverting to the findings recorded by the Tribunal only qua issue No.1.

5. Counsel for the appellant has vehemently contended that the FIR in question had been registered on the complaint of Jarnail, who stated himself to be an eye witness to the accident. Counsel during the course of hearing has adverted to the deposition recorded of Jarnail during the course of criminal trial and whereby Jarnail deposed and failed to identify the driver of the offending vehicle and who was present in Court. In furtherance of the argument raised as regards false implication, counsel would argue

that respondent No.1 in the claim petition i.e. the driver of the offending vehicle had since been acquitted in the criminal trial and under such circumstances, the impugned award cannot sustain.

6. Counsel for the appellant has been heard at length and pleadings on record have been perused.

7. It has gone uncontroverted that the offending vehicle i.e. the tractor trolley had been seized by the police authorities on the spot and on the date of accident itself. Furthermore, respondent No.1 in the claim petition i.e. driver of the offending tractor trolley had filed a written statement before the Tribunal and had not denied factum of the accident and to the contrary, a stand had been taken that the occurrence had taken place on account of negligence of the deceased himself. Driver of the vehicle had not even stepped into the witness box to deny his involvement in the case.

8. In the considered view of this Court, the Tribunal while passing the impugned award has rightfully held that the judgment of a criminal Court determining the guilt or innocence of a driver is neither conclusive nor binding on the Tribunal dealing with a claim petition. It is by now well settled that while adjudicating claim petitions regarding motor accident claims, the principle that is to be followed is preponderance of evidence. The standards of proof of a criminal case are different from claims set up for accident victims and the Tribunal while considering the issue of negligence adduced before it as to proceed un-influenced by the fact of pendency of a criminal case or judgment of acquittal given by the criminal Court.

9. This Court has consistently taken a view that when driver of the offending vehicle is not coming before this Court regarding his false implication then an adverse inference is liable to be drawn against him.

10. The findings recorded by the Tribunal on issue No.1 are based on cogent and valid reasoning. No infirmity is found therein.

11. There is no merit in the appeal and the same is, accordingly, dismissed.

09.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |