

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

F.A.O. No. 3819 of 2018(O&M)

Date of Decision: 11.07.2018

United India Insurance Company Limited.

.....Appellant.

Versus

Jasmeen Kaur and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by United India Insurance Company (Ltd.), challenging award dated 22.03.2018, passed by the learned Motor Accident Claims Tribunal, Chandigarh, wherein a sum of ₹34,68,000/- has been assessed as compensation to the respondent-claimants.

Brief facts necessary for the adjudication of the case are that petition under Section 166 of the Motor Vehicles Act, was filed by the claimant-respondents no.1 to 5 seeking compensation on account of death of Gurpal Singh in a motor vehicle accident caused due to rash and negligent driving of a Hyundai car bearing registration no. CH01-AG-8485 by respondent no.7-Aakarsh Kathuria. It was averred that deceased-Gurpal Singh was proceeding towards his house from Shashtri Market, Sector-22,

Chandigarh, after closing his vending business on his Bajaj Chetak scooter bearing registration no. PB-65-B-5834. Brother of the deceased was following him on his own scooter after shutting the vending business. When Gurpal Singh crossed the roundabout of Kisan Bhawan, the offending car being driven in a rash and negligent manner came from behind and struck against Gurpal Singh from the left side, due to which Gurpal Singh fell on the road. He received injuries. Driver of the car stopped at the spot and took Gurpal Singh to PGI in the same car. However, after leaving Gurpal Singh at PGI, driver of the car fled without disclosing his identity. Gurpal Singh succumbed to injuries on 27.06.2017. FIR No. 193 dated 26.06.2017 (Ex.P-24), was registered on the statement of Jagjit Singh (PW-2), brother of the deceased.

The claimants sought compensation on account of death of Gurpal Singh, who was stated to be running vending business as well as working part time. Reliance was placed on his income tax returns for the assessment years 2010-11 to 2016-17 to assess the income of the deceased as ₹2,76,000/- per month.

Learned tribunal on considering the facts, circumstances and evidence on record, concluded that the accident in question occurred due to the rash and negligent driving of the offending car by respondent no.-7. Compensation to the tune of ₹36,68,000/- was awarded to the respondents alongwith interest at the rate of 7.5% from the date of filing of the petition till its realization.

Aggrieved therefrom, this appeal has been filed by the Insurance Company.

Learned counsel for the appellant vehemently argues that the evidence on record does not in any manner prove that the accident in question was caused by the offending car being driven by respondent no.7. It is contended that the FIR in question as registered a day after the accident i.e. 26.06.2017. This delay in itself shows the falsity of the case. Moreover, there is no evidence on record to show that PW-2, brother of the deceased was present at the spot. It is submitted that the police officials have recorded that no eye witness was found present at the spot or at PGI, Chandigarh, when they visited the hospital and the spot of occurrence. Therefore, PW-2, being a close relative of the deceased has been falsely projected as an eye witness and his testimony cannot be relied upon. It is thus prayed that the insurance company be absolved off from its liability. No serious challenge has been raised regarding quantum of compensation awarded.

No other argument has been raised.

I have heard learned counsel for the appellant and have gone through the record which was produced in Court today.

There is no dispute that the FIR (Ex.P-24) in question was registered a day after the accident. However, this fact as well as the fact that the propounder of the FIR was the real brother of the deceased, cannot be a ground by itself to ignore the said evidence or to hold that the accident in question did not take place in the manner narrated. FIR (Ex.P-24) is duly proved on record. There is no dispute that Gurpal Singh, was indeed taken to PGI, Chandigarh. Postmortem report Ex.P-7 was produced on record which proves death of Gurpal Singh due to injuries received in the accident. It emerges from the record that both the deceased and his brother-Jagjit Singh,

are residents of Balongi. It is not in dispute that both the brothers were living in the same village. Therefore, to hold that the accident in case did not occur in the manner narrated, is not possible merely on the ground that in the police proceedings, it is recorded by the police officials that no eye witness was found present at the spot or at PGI, Chandigarh, when they had visited the hospital. The same only indicates that no such eye witness was present when the police officials arrived at the spot and the hospital. By no stretch of imagination can the same be taken to prove the absence of the eye-witness at the time of occurrence. It has been rightly held by the learned tribunal that in present proceedings causing of the accident due to the rash and negligent driving is to be proved on the basis of preponderance of probabilities and the claimants have successfully proved the same.

Learned counsel for the appellant is unable to point out any evidence on record which calls for reduction of the amount of compensation awarded to the claimants.

Accordingly, I do not find any infirmity, illegality or perversity in award dated 22.03.2018, passed by learned MACT, Chandigarh, which warrants any interference by this Court at the instance of the appellant.

Appeal is accordingly dismissed with no order as to cost.

11.07.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.