

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

FAO 4472 of 2018 (O&M)
Date of decision 17.10.2018

The New India Assurance Company LimitedAppellant

versus

Mukesh and othersRespondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. G D Gupta, Advocate
for the appellant

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Rekha Mittal, J. (oral)

CM 15181 CII of 2018

Allowed as prayed for. Affidavits of PW2 and PW3 are taken on record subject to just exceptions

Main case

The present appeal directs challenge against award dated 02.04.2018 passed by the Motor Accidents Claims Tribunal, Palwal (in short, 'the Tribunal') whereby compensation has been awarded on account of death of Partap Singh son of Prahlad Singh in a motor vehicular accident that took place on 19.02.2017.

Counsel for the appellant-insurance company would inform that the appeal has been filed only to assail findings of the Tribunal on issue No. 1 attributing rash and negligent driving to Ram Swaroop, driver of Eicher Canter bearing No. HR 73-A-6689 insured with the appellant insurance company. It is argued that the occurrence took place on 19.02.2017 at about 9.00 pm. Bishamber, brother of the deceased lodged FIR No. 165 dated 23.02.2017 at Police Station Sadar Palwal against an unknown vehicle and

driver. It is vehemently argued that the vehicle in question was planted later in collusion with the driver and owner thereof with a clear intent to extract compensation from the insurance company. In addition, it is argued that testimony of Rajbir, an alleged eye witness to the occurrence is not worthy of credence and reliance as he neither shifted the injured to the hospital nor reported the matter to the police or recorded his statement during investigation of the aforesaid FIR lodged at the behest of brother of the deceased. It is further argued that Rajbir has been introduced later to support cause of the claimants with regard to accident being the result of rash and negligent driving of offending vehicle.

I have heard counsel for the appellant and perused the paper book particularly the award impugned.

The Tribunal, on a detail consideration of materials on record and in view of discussion in paras 15 and 16 of the award, had recorded its conclusion that accident is the result of rash and negligent driving of offending vehicle. No doubt, Rajbir is not a witness in the criminal case lodged against Ram Swaroop but perusal of cross examination of Rajbir does not lead to a conclusion that he was not an eye witness to the occurrence or has been introduced later. Rajbir is not a co-villager of claimants nor he is related to them much less beneficiary in case the claim is accepted.

Counsel for the appellant has conceded that on due investigation of aforesaid FIR, challan was presented against Ram Swaroop, driver of the offending vehicle and he was put to trial. Ram Swaroop did not appear in the witness box to counter version of the claimants or testimony of Rajbir. Counsel for the insurance company has failed to point

out any material to substantiate plea of the insurer that the vehicle in question was planted later in collusion with the driver or/and owner of the offending vehicle. The proceedings before the Tribunal are summery in nature and do not admit strict principles of law of evidence to be applied. Failure of the driver to appear in the witness box without any tangible explanation would lead to an adverse inference against the respondents therein. In this view of the matter, I find it difficult to accept contention of the appellant that findings of the Tribunal on issue No. 1 suffer from an error much less perversity that would call for intervention by this Court. Accordingly, findings of the Tribunal on issue No. 1 are affirmed.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*. As the appeal has been decided on merits, application for condonation of delay in filing the appeal is of academic relevance.

(Rekha Mittal)
Judge

17.10.2018
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