

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 6317 of 2018(O&M)

Date of Decision: 9.10.2018

The Oriental Insurance Company Limited

---Appellant

versus

Sarabjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Satpal Dhamija, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against award dated 6.4.2018 passed by the Motor Accidents Claims Tribunal, SAS Nagar Mohali (in short “the Tribunal”) whereby compensation has been awarded on account of death of Sukhwinder Singh in a motor vehicular accident that took place on 16.4.2017.

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Tribunal on issue No. 1 whereby the Tribunal has held that accident is the result of composite negligence of motor cycle driven by Dara Singh respondent No. 1 and driver of unknown car which hit the motor cycle. It is argued that Dara Singh respondent No. 1 lodged FIR 57 dated 17.4.2017 under Sections 279, 304-A, 427 of the Indian Penal Code at Police Station, Sadar Kurali against unknown car. After due investigation of said FIR, untraced report was prepared by the

police. Further argued that claimants examined Ranjit Singh PW2 to substantiate their plea that accident was the result of rash and negligent driving of motor cycle No. PB-65-AL-1682 by Dara Singh respondent No.

1. It is vehemently argued that testimony of Ranjit Singh is not worthy of credence and reliance as he neither accompanied the injured to the hospital nor lodged any complaint/report with the police attributing negligence to Dara Singh respondent No. 1. In addition, it is argued that Ranjit Singh being co-villager of the claimants has been introduced later, to support their cause for claiming compensation when as a matter of fact he was not present at the spot.

I have heard counsel for the appellant, perused the paper book particularly the award and copy of testimony of Ranjit Singh made available during the course of hearing.

Perusal of cross examination of Ranjit Singh would reveal that he has not denied that he did not accompany the injured to the hospital. He has stated that he did not accompany the injured to the hospital in the vehicle in which he was shifted as he had his own motor cycle and went to the hospital on motor cycle. This fact falsifies and belies contention of the appellant that Ranjit Singh did not visit the hospital immediately after the injured was shifted there in a private vehicle.

The mere fact that Ranjit Singh did not approach the police for complaining against conduct of Dara Singh attributing him rash and negligent driving ipso facto is not sufficient to discard his testimony that he had witnessed the accident.

Another important aspect of the matter is that Dara Singh did not appear in the witness box to counter case of the claimants or rebut

testimony of Ranjit Singh. An adverse inference is liable to be drawn against Dara Singh for his failure to appear in the witness box without any tangible explanation. In this view of the matter, I find myself unable to accept contention of the appellant that findings of the Tribunal on issue No. 1 are erroneous and liable to be set aside.

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 of 54 days in refiling the appeal is of academic relevance only.

(Rekha Mittal)
Judge

9.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No