

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

**FAO No.1712 of 2019 (O&M)
Date of decision: 09.09.2019**

Iffco Tokio General Insurance Company Ltd.

....Appellant

Versus

Nirmla Devi and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.S. Sidhu, Advocate,
for the appellant-Insurance Company.

RITU BAHRI J. (Oral)

CM No.5217-5218-CII of 2019

For the reasons mentioned in the applications, same are allowed and delay of 13 days in filing and 11 days in re-filing of the appeal is condoned.

FAO No.1712 of 2019 (O&M)

Iffco Tokio General Insurance Company Ltd.-appellant has filed this appeal against the award dated 14.09.2018 passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.32,00,168/- has been awarded in favour of the claimants-respondent Nos. 1 & 2 on account of death of their son Ankit in a motor vehicular accident which took place on 18.03.2017.

Insurance Company-appellant is challenging the finding given by the Tribunal that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver (respondent No.1 in

claim petition)

Learned counsel for the appellant has vehemently argued that after the accident on 18.03.2017, FIR Ex.P8 was immediately got registered by Yogesh Kumar, brother of deceased Ankit. However, he was not eye witness of the accident. In the said accident, Divesh (pillion rider) has received injuries. Said Divesh was discharged from the hospital after four days, but he got recorded his statement under Section 161 Cr.P.C. with the police on 11.04.2017. Learned counsel further argued that once, the injured had been discharged from the hospital after four days, why he did not give number of the car on the same date.

Heard, counsel for the parties.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. A perusal of the impugned award shows that as per MLR Ex.P10, Divesh received injuries in the accident in question on 18.03.2017 and he was referred from CHC, Mohindergarh to PGIMS, Rohtak. MLR Ex.P10 is not being disputed by the Insurance Company. However, the stand of the insurance company is that the statement of Divesh was recorded after 24 days of the accident.

In the present case, pillion rider Divesh received injuries in the accident and he was referred from Mohindergarh to PGIMS, Rohtak. No evidence was led by the Insurance Company to show, as to on which date, he was discharged from PGIMS, Rohtak. Injuries received by eye witness Divesh were not simple in nature, that is why he had been referred to PGIMS, Rohtak. Time taken by him to recover and give statement to the police after 24 days, cannot be made a ground to reverse the findings given by the Tribunal on issue No.1. After he made a statement on 11.04.2017,

driver-respondent No.3 (respondent No.1 before the Tribunal) was arrested on 26.04.2017. Thereafter, the matter was investigated by the police and challan Ex.P6 was presented before the Court. Consequently, charge Ex.P5 was framed against him. Injured eye witness Divesh (PW-3), who was pillion rider on the motorcycle of deceased-Ankit had deposed with regard to the allegations of rash and negligent driving by Mukesh Kumar, who was driving the offending vehicle bearing No. RJ-14-CL-1199.

After going through the impugned award in the light of the above discussion, this Court is of the view that finding on issue No.1 has been rightly given by the Tribunal. Moreover, there was no denial on the part of appellant-insurance company that the vehicle was insured with it. In the present case, after registration of FIR Ex.P8, the driver was facing a criminal trial, wherein, charge Ex.P5 has already been framed against him. The compensation has also been rightly assessed by the Tribunal after appreciating evidence in the right perspective and no ground is made out to interfere therein.

Resultantly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

09.09.2019

ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No