

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

122

FAO-1162-2019 (O&M)

Date of decision: 25.02.2019

UNITED INDIA INSURANCE CO.LTD

... Appellant

Versus

OM PARKASH AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the appellant.
Mr. Dheeraj Narula, Advocate
for caveator/respondents No.1 and 2.

REKHA MITTAL, J. (Oral)

United India Insurance Company Ltd. (in short 'the insurance company') is in appeal to assail award dated 01.11.2018 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has been assessed on account of death of Vipin Kumar in an accident that took place on 31.08.2016.

Counsel for the appellant would fairly inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 with regard to involvement of the offending vehicle in the occurrence or the accident is the result of rash and negligent driving of motorcycle No.HR-24W-9846 by Amrit Pal respondent No.1 before the Tribunal.

It is argued that in order to discharge onus of issue No.1, the claimants examined Darshan Jindal PW4 brother of claimant Om Parkash and Darshan Singh PW5. Darshan Jindal is the author of FIR No.122 dated 01.09.2016 registered with Police Station Talwandi Sabo under Sections 279, 304-A and 427 IPC but in the FIR, there is no reference that accident was caused by the alleged offending vehicle i.e. motorcycle No.HR-24W-9846. Darshan Jindal appeared in the witness box and admitted in his cross examination that by the time he reached the spot, the injured were not available there but both the motorcycles were lying at the spot. It is argued that this statement of Darshan Jindal proves that he was not present at the spot at the time of occurrence, therefore, his testimony cannot be taken into

consideration to attribute rashness and negligence to Amrit Pal driver of the offending vehicle. In the alternative, it is argued that had it been true that Darshan Jindal had seen both the motorcycles lying at the spot, there was no reason for him not to give particulars of the said motorcycle in the first version recorded by the police on the next day of occurrence.

To condemn correctness of statement of Darshan Singh PW5, alleged eye-witness to the occurrence, it is argued that during police investigation, it was found that mobile location of PW5 was at a different place than site of accident and for that reason Amrit Pal was declared innocent at one point of time though later challan was presented and proceedings are pending in the Court. According to counsel, Darshan Singh PW5 is yet to appear in the criminal case. In addition, it is argued that Amrit Pal sustained injuries in the occurrence and his statement was recorded by the police while he was lying admitted in the hospital wherein he had categorically stated that both the motorcycles were hit by Mahindra pick up, therefore, it can be safely held that the present is a case of hit and run but the alleged offending vehicle has falsely been indicted to extract compensation from the insurance company.

Darshan Singh PW5 is the only witness stated to be present at the spot at the time of unfortunate occurrence in which Vipin Kumar sustained injuries that proved fatal. Though initially Amrit Pal was declared innocent but subsequently challan has been presented against him for causing the occurrence. Amrit Pal had every reason to deny his liability for the occurrence in order to escape from civil and criminal consequences. Amrit Pal did not appear in the witness box to counter testimony of Darshan Singh PW5 or contest plea of the claimants that accident was caused due to his rash and negligent driving. The mere fact that in the FIR lodged at the behest of Darshan Jindal PW4 there is no reference to offending vehicle despite his having seen the motorcycles lying at the spot or the information passed on to him by Darshan Singh PW5 with regard to accident having been caused by Amrit Pal due to his rash and negligent driving ipso facto is not sufficient either to discredit testimony of PW5 or the final investigation report indicting Amrit Pal for causing the occurrence. An adverse inference is liable to be drawn for failure of Amrit Pal to appear in the witness box

either to say something about his statement recorded by the police or counter testimony of Darshan Singh PW5.

The insurance company has raised a plea of collusion between the claimants and Amrit Pal but counsel has failed to point out any materials on record to substantiate the said plea. This apart, proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. In view of discussion made hereinbefore, I find it difficult to differ with findings of the Tribunal determining issue No.1 in favour of the claimants and against the respondents before the Tribunal.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

The amount of Rs.25,000/- deposited by the insurance company be remitted to the Tribunal for disbursement to the claimants.

25.02.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No