

In the High Court of Punjab and Haryana at Chandigarh

FAO- 2167 of 2019(O&M)

Date of Decision: 9.7.2019

United India Insurance Company Limited

---Appellant

versus

Satpal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 3.12.2018 passed by the Motor Accidents Claims Tribunal, Rohtak (in short “the Tribunal”) whereby compensation has been assessed on account of injuries sustained by Satpal in a motor vehicular accident that took place on 2.5.2013.

Counsel for the insurance company would inform that appeal has been filed to challenge findings of the Tribunal attributing negligence to the injured only to the extent of 25% whereas even if findings are affirmed that the present is a case of contributory negligence of the motor cycle driven by respondent No. 1 and other motor cycle driven by Sorabh (since deceased), the claimant is required to be attributed negligence to the extent of 50% and consequently, the claimant would be entitle to 50% of compensation assessed by the Tribunal. To bring home his contention, it is argued that FIR for the occurrence in question was registered against

respondent No. 1. On due investigation of FIR, challan was presented in the court against Satpal though eventually he was acquitted of the offence charged against him. It is argued that in view of location of motor cycles involved in the occurrence after accident shown in the site plan prepared by the police during investigation of FIR, a copy whereof has been appended at page 35 of paper book, negligence to respondent No. 1 is liable to be attributed at least to the extent of 50%.

I have heard counsel for the appellant, perused the paper book and records of the Tribunal.

Be that as it may, criminal proceedings initiated against the respondent/claimant culminated in judgment of acquittal. Counsel has fairly conceded that none of the witnesses examined in the criminal case supported cause of prosecution to prove culpability of the respondent-claimant. Claimant appeared in the witness box and reiterated his version as to how the occurrence in question took place because of offending motor cycle driven by Sorabh having diverted on wrong side and hit against motor cycle driven by him on correct side of road. Counsel has failed to point out any materials elicited in cross examination of Satpal to discard or disbelieve his testimony. The respondents before the Tribunal did not adduce any evidence to counter testimony of Satpal. As per the settled position in law, the suggestions put to a witness are not a substantive piece of evidence. In the given scenario, it is difficult to accept contention of the appellant that respondent is liable to be attributed negligence to an extent more than what has been decided by the Tribunal.

The site plan relied upon by the insurance company was admittedly prepared subsequent to the occurrence. This court cannot over-

look the fact that accident is rarely an intentional act and every prudent person would try to avoid accident and in the process, the vehicles involved in the occurrence are swerved to different directions, reflected in the site plan prepared by police later in point of time. This apart, perusal of the site plan also does not indicate that either Satpal could be attributed exclusive negligence or negligence more than 25 %. As such, I do not find any reason to differ with findings of the Tribunal on issue No. 1.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. It is clarified that in case the respondent-claimant files appeal, findings aforesaid recorded for the purpose of deciding appeal by the insurance company would not cause prejudice to him.

The statutory amount of Rs. 25,000/- be remitted to the Tribunal for payment to the claimant.

(Rekha Mittal)
Judge

9.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No