

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

**FAO No.3005 of 2002 (O&M)
Date of Decision : 24.01.2019**

Suman Gupta & ors.

....Appellants

VERSUS

New India Assurance Company & others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Ashok Jindal, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate for respondent No.1-Insurance Company.

Mr. Binderjit Singh, Advocate for respondent Nos.2 and 3.

B.S. WALIA, JUDGE (ORAL)

1. Appeal has been filed by the claimants against the dismissal of the claim petition and award of only ₹50,000/- under Section 140 of the Motor Vehicles Act on account of death of Surinder Kumar Gupta on 24.08.1998 in a motor vehicular accident on 21.08.1998.

2. I have heard learned counsel for the parties. Brief facts of the case are that the deceased Surinder Kumar Gupta was driver of Van No.DL-5C/2180 and the same struck against Truck No.RJ-13G/0357 while trying to avoid a Maruti car which was trying to overtake Truck No.RJ-13G/0357. Sh. Rambir Kumar was an employee of Surinder Kumar Gupta and co-passenger of the ill-fated Van No.DL-5C/2180. The said Rambir Kumar sustained injuries in the accident and on his statement, DDR No.23 dated 23.08.1998 was lodged

(Ex.A12). In his statement to the police, Rambir Kumar stated that he was travelling in Van No.DL-5C/2180 along with Surinder Kumar Gupta, Contractor and they were going to Budhlada village by Muktsar road and he was sitting on the front seat. Van was being driven by Surinder Kumar Gupta and when they reached near Punjab Poly Jute Corporation Factory, near Thermal Plant, Bathinda, one Truck No.RJ-13G/0357 came from Bathinda side and behind the said truck, one Maruti Car also came from Bathinda side. The driver of the Maruti Car suddenly tried to overtake the truck and in the meantime, their van came in front of the truck on account of Surinder Kumar trying to avoid striking the Van against the Maruti Car despite the truck driver taking his truck to the left side and one wheel of the truck going on the Katcha side of the road. However, Surinder Kumar Gupta struck the Van against the front side of the truck and the driver side of the Van went beneath the Truck and Surinder Kumar Gupta received injuries. Further Rambir Kumar in his report No.8 dated 27.08.1998 (Ex.A13) stated that Van No.DL-5C/2180 and Truck No.RJ-13G/0357 were involved in the accident suddenly and in a natural manner and that there was no fault of the truck driver Surinder Pal. However, in the examination-in-chief before the Tribunal, witness Rambir Kumar took up a totally contrary stand but in cross-examination, admitted that whatever had been written in Ex.A12 and Ex.A13 was correct. Besides, statement of Rambir Kumar, AW-2 was rebutted by driver of the truck, who appeared as RW-1 i.e. Surinder Pal @ Harinder Pal.

3. The learned Tribunal in the aforementioned background concluded that there was no scope for Rambir Kumar to state falsely in Ex.A12 and Ex.A13 and that in view thereof, the accident took place without the negligence or fault on the part of respondent No.1, driver of the truck and that in the

presence of Ex.A12 and Ex.13, the oral statement of Rambir Kumar as AW-2 could not be believed.

4. Once it is the admitted position that in his cross-examination as AW-2, Rambir Kumar admitted that whatever was written in DDR Ex.A12 and Ex.A13 dated 23.08.1998 and 27.08.1998 respectively was correct then his statement as AW-2 before the learned Tribunal cannot be believed. Besides, as per the version given in the DDR, the Maruti car coming from the opposite side tried to overtake the truck whereupon the truck driver took the truck on the left side on to the kacha portion while it was the van being driven by Surinder Kumar Gupta which went to the wrong side of the road to avoid hitting the car coming from the opposite side as a result of which the right side of the van struck against the right front side of the truck. Therefore, in the circumstances, it is apparent that the truck driver was not at fault and it was only on account of the nervous reaction of Surinder Kumar Gupta who took the van to the wrong side instead of taking it towards the correct side i.e left side in order to avoid hitting the on coming Maruti car which resulted in the accident.

5. In the circumstances, I am of the view that the award does not warrant any interference.

6. Accordingly, finding no merit in the appeal, the same is dismissed.

January 24, 2019
ps

(B.S. WALIA)
JUDGE

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