

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4311-2019 (O&M)
DATE OF DECISION: 05.07.2019

UNITED INDIA INSURANCE CO. LTD. ...APPELLANT..

VERSUS

ANITA AND ORS. ...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Lalit Garg, Advocate,
for the appellant.

RAMENDRA JAIN, J. (ORAL)

Appellant-insurance company through instant appeal has laid challenge to award dated 17.05.2019, passed by Motor Accident Claims Tribunal, Hisar (for short, "Tribunal") awarding compensation to the tune of ₹ 18,53,000/- along with interest @ 9% per annum from the date of filing of the claim petition till realization to respondents No.1 to 6 against the death of Mohinder Sharma in a motor vehicular accident.

Earlier an award was passed against respondents No.7 and 8 i.e. driver and owner of the offending vehicle, exonerating the liability of the appellant-insurance company. On challenging the same before this Court by respondents No.7 and 8, earlier award was set aside and

case was remanded to ld. Tribunal for fixing the liability. Consequently, after perusal of the record and evidence led by the parties, ld. Tribunal has passed the impugned award with direction to the appellant-insurance company to pay the aforesaid compensation of ₹18,53,000/- with recovery rights to recover the same from respondents No.7 and 8.

Learned counsel contends that appellant-insurance company has challenged the findings of ld. Tribunal qua negligence of respondent No.7, on the ground that as per deposition of Naresh Kumar PW-2, who witnessed the accident, in which, his real brother Mohinder Sharma expired, the accident had occurred on account of fighting of two oxen and not on account of negligence of respondent No.7, which is evident from site plan Annexure A-1 and Annexure A-2 (Ex.R-10 & Ex.R-13 before the Tribunal).

Having given thoughtful consideration to the submissions, this Court finds instant appeal completely devoid of any merit for the reasons to follow:-

1. PW-2 Naresh Kumar-eye witness of the accident categorically testified that respondent No.7 while driving offending TATA Indigo car bearing Registration No.HR-70A/9018 in a rash, negligent manner and also in high speed hit bycycle of the deceased. As a result thereof, deceased-Mohinder Sharma received multiple grievous injuries and finally succumbed to the same. Driver of the offending vehicle i.e. respondent No.7 was solely responsible for

causing the accident in question due to rash and careless driving, who after causing the same fled away from the spot. His statement is corroborated by FIR (Ex.P-2) and final report under Section 173(2) Cr.P.C. filed by the police in court against respondent No.7 for his trial under Sections 279 and 304-A IPC. It is altogether a different matter that after facing trial, respondent No.7 was acquitted on technical grounds. However, the finding of a criminal court is not binding upon Id. Tribunal.

The statement of PW-2 Naresh Kumar has gone unrebutted and unchallenged, inasmuch as, no contrary evidence was led by the appellant-insurance company or by respondents No.7 and 8. Therefore, the site plan prepared by the police, during investigation, which has been relied upon by the appellant-insurance company, has no evidentiary value over and above the statement of PW-2, who testified the manner of accident in question and negligence of respondent No.7 in court.

In view of above factual position, this Court is not inclined to interfere with the findings recorded by Id. Tribunal qua negligence of respondent No.7.

While remanding the case to Id. Tribunal, this Court vide order dated 29.01.2019, specifically observed that the remand would not affect the rights of respondents No.1 to 6-claimants qua compensation already granted to them, inasmuch as, it was remanded only for a limited point to fix the liability amongst insurance company

and driver and owner of the offending vehicle.

The aforesaid order of this Court was never challenged by the appellant-insurance company. Therefore, the same has attained finality. As such, the compensation awarded to respondents No.1 to 6-claimants cannot be reduced.

In view of the discussion made above, the instant petition is dismissed.

05.07.2019

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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No