

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

FAO No. 4350 of 2019(O&M)

Date of decision: 10.7.2019

IFFCO TOKIO General Insurance Company Ltd.Appellant

VERSUS

Piar Kaur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 09.05.2019 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been assessed on account of death of Balkar Singh in a motor vehicular accident that took place on 18.05.2015.

Counsel for the appellant would argue that the appeal has been preferred to assail findings of the Tribunal only on issue No.1 on the basis whereof rashness and negligence in causing the accident has been attributed to Sanjay Kumar – respondent No.2, driver of motorcycle bearing No.HR-41F-6400. It is argued that as per the case set up by the claimant/respondent, Balkar Singh was a pillion rider on the motorcycle driven by Sanjay Kumar and accident took place when a stray cow suddenly came on road and Sanjay Kumar applied brakes but the motorcycle swerved and Balkar Singh hit against the tree standing on side of the road. It is argued with vehemence that in respect of the occurrence, DDR No.14 dated 18.05.2015 was recorded in Police Post Chunni Kalan at the behest of Angrej Singh who is none else but brother of deceased Balkar

Singh. It is argued that in the DDR, Angrej Singh had categorically stated that nobody is at fault for the unfortunate occurrence but when Angrej Singh appeared before the Tribunal, he took complete summersault to depose on oath that driver of the motorcycle is responsible for the occurrence on account of his rash and negligent driving. It is vehemently argued that in view of this serious contradiction in the stand of Angrej Singh at the first available opportunity and his testimony before the Tribunal coupled with that Angrej Singh is an interested witness being real brother of the deceased, findings of the Tribunal on issue No.1, based upon testimony of Angrej Singh, cannot be allowed to sustain and liable to be set aside.

I have heard counsel for the appellant, perused the paper-book particularly the award and documents appended thereto.

Perusal of testimony of Angrej Singh before the Tribunal makes it evident that he has deposed the facts in consonance with his version recorded in the DDR that a stray cow appeared on the road, Sanjay Kumar applied sudden brakes, lost control of the motorcycle and Balkar Singh hit against tree standing on the road. Angrej Singh being the real brother of deceased might not have been able to understand the gravity of situation when he lodged the DDR. The very fact that driver of the motorcycle could not stop the vehicle with safety when a cow suddenly appeared on the road is an indicator that he did not take reasonable care to avoid accident. Sanjay Kumar did not appear in the witness box to say on oath that despite his best efforts to avoid accident, he could not do the same. In the given circumstances, it is difficult to accept contention of the appellant that testimony of Angrej Singh is not sufficient to prove rashness

and negligence on the part of Sanjay Kumar while driving the motorcycle.

In this context, reference can be made to judgment of this Court **Bansi and another Vs. Vikas, FAO No.7213 of 2010 decided on 29.08.2012,**

wherein this Court has observed, reads thus:-

“When the claimant had originally stated that there had been no negligence on the part of the motorcyclist and that the accident was inevitable on account of a cow crossing the road and later he resiled from such a statement, I have no reason to suspect that he was speaking any untruth before the Court. A person who so drives his motorcycle that would result in dashing against a tree when a cow was crossing, cannot be an act of careful driving. By the very nature of things, a motorcyclist dashing against a tree when a cow was crossing the road, ought to be stated to be guilty of negligent driving. If the claimant was making a statement initially that there was no negligence on the part of the motorcyclist but later he made a different statement to sustain his claim, it was perfectly justified that he made a re-assessment of his own judgment of what caused the accident”

Reference can also be made to judgment of this Court **United India Insurance Company Ltd. Vs. Sahil Garg and another, FAO No.6419 of 2016 decided on 04.11.2016.** In this view of the matter, I do not find any reason to interfere in findings of the Tribunal qua issue No.1.

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.

JULY 10, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no