IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.8.2019

1. **FAO No. 5290 of 2019(O&M)**

National Insurance Co. ltd. …..Appellant

VERSUS

Raj Kumar and others .....Respondents

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2. **FAO No. 5292 of 2019(O&M)**

National Insurance Co. ltd. …..Appellant

VERSUS

Sukhwant Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gopal Mittal, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5290 and 5292 of 2019 as these have emerged out of the same award dated 06.05.2019 whereby injured Raj Kumar and Sukhwant Singh have been awarded compensation by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') in respect of injuries sustained in a motor vehicular accident that took place on 09.05.2016.

The sole submission made by counsel for the appellant is that in respect of the occurrence in question, DDR was lodged wherein it has been specifically mentioned that accident took place because of a cow having suddenly appeared before the motorcycle and no one is responsible for the occurrence. It is vehemently argued that in view of the first version recorded in the DDR and absence of any FIR being lodged against driver of the motorcycle, findings recorded by the Tribunal on issue No.1 attributing rashness and negligence to driver of alleged offending vehicle 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.

Counsel for the appellant, in response to a query, is not in a position to point out any tangible material elicited in cross examination of injured Raj Kumar and Sukhwant Singh to impeach their credibility or to prove that accident is not the result of rash and negligent driving of motorcycle of which the injured were pillion riders. The controversy raised in the present appeals is squarely covered against the insurance company in view of judgment of this Court **Bansi and another Vs. Vikas, FAO No.7213 of 2010 decided on 29.08.2012** wherein it is held, 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”

So far as plea that no FIR was registered in the case, there is no proposition in law that lodging of FIR is a *sine qua non* for maintaining claim before the Tribunal. In this view of the matter, I find myself unable to be persuaded by the arguments of counsel for the insurance company that findings of the Tribunal on issue No.1 are faulty and call for intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine.

AUGUST 28, 2019 **(REKHA MITTAL)**
‘D. Gulati’ **JUDGE**

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