

FAO No.722 of 2015 (O&M) with
XOBJC No.144 of 2015

[1]

218(B)

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

**FAO No.722 of 2015 (O&M) with
XOBJC No.144 of 2015
Date of Decision : 07.05.2019**

United India Insurance Company Ltd.

Appellant

Versus

Hardesh Goyal and others

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. R.S. Budhwar, Advocate
for respondent No.1-Cross Objector.

Mr. S.K. Bawa, Advocate
for respondents No.2 and 3.

AVNEESH JHINGAN, J. (Oral)

The award dated 27.10.2014 passed by the Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali [for brevity 'the Tribunal'] has been assailed by the Insurer of Tractor bearing registration No. HR-02S-9384 [hereinafter referred to as 'offending vehicle'] being aggrieved of the quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Cross Objections have also been filed by the claimant seeking enhancement of compensation.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 29.04.2012. Two vehicles involved in the accident were Mahindra Scorpio Car bearing registration No. CH-03Y-0555 [hereinafter referred to as 'Car'] and the offending vehicle. The accident was result of rash and negligent driving of the offending vehicle. The car was damaged in the said accident. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

A claim petition was filed seeking damages for damage to the car. The Tribunal assessed damage of ₹2,93,151/- relying upon the Surveyor Report i.e. Ex.P10 and ordered payment of ₹1,22,003/- as the claimant had already received ₹1,71,149/- from the insurer of the Car. The grievance raised by learned counsel for the insurer is that Ex.P10 was never proved as Surveyor was never examined.

Learned counsel for the claimant states that the said Report was accepted by the insurer of Car. He further states that bill of ₹3,31,972/- was produced to show the cost of repair.

The fact remains that the Surveyor Report was relied upon by Tribunal but the claimant exhibited bill of repair from M/s Swami Automobiles which was not proved. Nobody was examined from M/s Swami Automobiles. The Surveyor Report relied upon will not be binding on the insurer of the offending vehicle and the same needs to be substantiated.

Learned counsel for the insurer made feeble attempt to

raise the issue of validity of Driving Licence. Nothing has been shown that this issue was pressed before the Tribunal. Nothing has been produced to show that Driving Licence was not valid at the time of accident. In the connected appeal, arising out of same accident, the insurer has not challenged the validity of the Driving Licence, no interference is called for, in the findings recorded by Tribunal with regard to liability to pay compensation.

To decide the issue regarding quantum of compensation, certain factual aspects need to be gone into which would require adducing of fresh evidence. The issue with regard to quantum of compensation is remitted back to the Tribunal to be decided afresh after affording opportunity to the parties to adduce fresh evidence in support of their claims.

The parties are directed to appear before the Tribunal on 29.07.2019.

The appeal and cross objection are disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

May 07, 2019

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | No |