

FAO- 1747 of 2020 (O&M)
Date of Decision: 6.3.2020

United India Insurance Company Limited

---Appellant

versus

Navdeep Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Amit Kundra, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 16.11.2019 passed by the Motor Accidents Claims Tribunal, Mansa (in short “the Tribunal”) whereby compensation has been assessed on account of injuries sustained by Navdeep Kumar-respondent/claimant in a motor vehicular accident that took place on 15.3.2017.

The sole submission made by counsel for the appellant is that as the present is a case of contributory negligence of the injured, he is not entitle to compensation to the extent of negligence attributable to him. To bring home his contention, it is argued that charge sheet under Section 173 of the Criminal Procedure Code (in short “Cr.P.C.”) has been filed against drivers of both the vehicles namely car driven by the injured-claimant and alleged offending car Swift D'zire ZDI bearing No. PB-31-L-7253 by Rajwinder Singh (respondent No. 1 therein).

Indisputably, on due investigation of FIR lodged at the behest

of claimant, challan has been presented against drivers of both the vehicles involved in the occurrence. Navdeep Kumar injured appeared in the witness box and corroborated his plea that accident is the result of rash and negligent driving of offending vehicle that came from the link road and hit against the car driven by Navdeep Kumar. Counsel has failed to point out any facts elicited in cross examination of Navdeep Kumar to prove that negligence to any extent can be attributed to him by holding that the present is a case of contributory negligence of drivers of both the vehicles. Rajwinder Singh, driver of offending vehicle did not appear in the witness box to counter testimony of Navdeep Kumar, therefore, an adverse inference is liable to be drawn against him. The police investigation can not invite primacy over statement of a witness on oath recorded by a Court. Taking into consideration the facts brought forth by Navdeep Kumar in his duly sworn affidavit tested in cross examination, I find it difficult to accept contention of the appellant that contributory negligence is liable to be attributed to the injured merely because drivers of both the vehicles have been challaned by the police.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. It is clarified that nothing stated hereinbefore shall cause prejudice to the respondent/claimant if he prefers an appeal to seek additional compensation.

(Rekha Mittal)
Judge

6.3.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No