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

*124*

**FAO No.516 of 2021 (O&M)**
**DATE OF DECISION : 28th SEPTEMBER, 2021**

**United Indian Insurance Company Limited**

…. **Appellant**

**Versus**

**Jaspal Kaur and others**

…. **Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

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**In virtual Court**
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Present : Mr. Neeraj Khanna, Advocate for the appellant.

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**RAJBIR SEHRAWAT, J. (Oral)**

This is an appeal filed by the appellant-Insurance Company challenging the award dated 19.03.2021 passed by the Motor Accident Claims Tribunal, Jalandhar (for short, the Tribunal), whereby an amount of ₹10,70,315/- along with interest @ 7.5% per annum, from the date of filing of the claim petition, has been awarded as compensation on account of death of Kulwant Singh in a motor vehicular accident.

The brief facts of this case, as mentioned in the award passed by the Tribunal are; that on 13.03.2019 at about 7.00 p.m., Kulwant Singh was going to his house on foot after finishing his work. When, he reached near the gate of village Atta, a car of Wagon R make; bearing registration No.PB-59A-3051, being driven by respondent No.1 in rash and negligent manner, came without blowing any horn. The said car hit Kulwant Singh, due to which he fell down. Kulwant Singh suffered serious injuries; to which he succumbed in the hospital. On account of this accident, FIR No.32 dated 13.03.2019 was registered under Section 304-A IPC at Police Station Goraya. With these facts, the claim petition was filed asserting therein that the deceased Kulwant Singh was of the age of 55 years. He was working as Clerk with an Advocate at Phillaur and was earning ₹20,000/- per month from his vocation. The claimants, who are the parents, widow and children of the deceased; were fully dependent upon him. Hence, a compensation of ₹40.00 Lakh was claimed in the claim petition.

Respondent Nos.1 and 2 in the claim petition, the owner and driver; filed their joint written statement asserting therein that no accident had taken place with their vehicle mentioned above. The story was put forward by the claimants only as concocted one. Appellant/respondent No.3-Insurance Company filed separate written statement asserting therein that the accident never took place due to rash and negligent driving of the driver of Wagon R car bearing registration No.PB-59A-3051. It was further asserted that the driver was not holding a valid and effective driving licence at the time of accident. The name of respondent No.1 was falsely incorporated in the FIR due to connivance of the respondent, who is co-villager and relative of the deceased. On merits, the assertions qua the employment and income of the deceased were denied. However, it was not disputed that the offending car was insured by the appellant/insurance company.

To prove the case, claimant no.1 Jaspal Kaur herself appeared as CW-1. Beside this, CW-2 Ranjit Singh was also examined before the Tribunal. Thereafter, the evidence of the claimants was closed. On the other hand, the respondents did not lead any oral evidence in support of their case. The respondents, driver and owner had only tendered in evidence the copy of registration certificate, copy of driving licence of respondent No.1 and copy of the insurance policy.

After considering the evidence led by the respective parties, the Tribunal assessed the income of the deceased to be ₹1,01,412/- per annum. Future prospects @ 10% were granted. Deduction of 1/4$^{th}$ and multiplier of 11 was applied. Beside this, ₹15,000/- was awarded as funeral expenses. Loss of estate and loss of consortium was also awarded. Accordingly, the above said amount of ₹10,70,315/- was awarded in favour of the claimants.

Arguing the case on behalf of the appellant, learned counsel for the appellant has submitted that the claim of the claimants was based upon fabricated story. The offending vehicle was never involved in the accident. Although, the FIR was registered qua this accident, however, neither any registration number of the offending vehicle was mentioned in the said FIR, nor were any details of the driver mentioned. Learned counsel has further submitted that the vehicle has been sought to be involved; and challan has been filed against the driver of the offending vehicle; only on the basis of an alleged confession; made by the driver before the family of the deceased. Therefore, the collusion in the case is writ large on the face of it. Learned counsel has further submitted that it is not disputed that there was no eye witness of the case. Hence, the claimants have failed to prove the fact that the vehicle in question was involved in the accident.

Having considered the arguments of the counsel for the appellant and having perused the case file, this Court does not find any substance in the argument raised by learned counsel for the appellant. Undisputedly, the driver of the offending vehicle is facing the criminal trial. Even that criminal trial is based upon the disclosure of none other than the driver of the offending vehicle. The material relating to the FIR in question has been brought on record before the Tribunal. Hence, no fault could be found qua the conclusion arrived at; by the Tribunal that the claimants have succeeded in proving involvement of the offending vehicle in the accident in question. Another significant aspect is that although the insurance company asserts non involvement of the vehicle in question in the accident, however, it has failed to lead any evidence to substantiate their assertion. Even if it is taken as correct that the driver of the offending vehicle in question was colluding with the family of the deceased, then also there was nothing to prevent the appellant/insurance company to produce the owner of the said vehicle to deny the accident in question or to deny involvement of his vehicle in this accident. However, neither the driver nor the owner has been produced by the insurance company as witness before the Tribunal; to face the cross examination by the claimants. Needless to say that the standard of proof in motor accident claim cases is of the preponderance of probabilities, which has duly come on record in the present case.

No other argument was raised.

In view of the above, finding no merits in the present appeal, the same is dismissed.

**(RAJBIR SEHRAWAT)**
**JUDGE**

**28th SEPTEMBER, 2021**
*'sandeep'*

*Whether speaking/reasoned: Yes No*
*Whether Reportable: Yes No*