

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

Sr. No.114

**CM-11601-CII-2021 in/and
FAO No.866 of 2021
Date of Decision : October 28, 2021**

The New India Assurance Company Limited

...Appellant

Versus

Kamlesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vinod Gupta, Advocate, for the appellant.

SUDHIR MITTAL, J. (ORAL)

CM-11601-CII-2021

This application has been filed for placing on record copy of FIR dated 31.12.2015.

For the reasons stated therein, the same is allowed and copy of FIR annexed with the application is taken on record.

At oral request, main case is taken on board.

FAO No.866 of 2021 (O&M)

Vide Award dated 09.05.2019, the Motor Accidents Claims Tribunal, Rewari has allowed the claim petition filed by the heirs of deceased Mahipal Singh who died in an accident on 31.12.2015. Compensation amounting to Rs.20,28,264/- has been granted.

An accident took place on 31.12.2015 resulting in the death of Mahipal Singh. Said Mahipal Singh was riding a scooty. The accident was witnessed by PW-2-Sumer Singh and he is the star witness on behalf of the claimants.

Learned counsel for the appellant has submitted that the accident with the offending vehicle has not been proved. FIR dated 31.12.2015 does not mention the number or make of the offending vehicle. In fact, the FIR mentions an accident with an unknown vehicle. PW-2 Sumer Singh is a planted witness. Had he been an eye-witness, the number and make of the offending vehicle would have been reflected in the FIR.

The argument cannot be accepted. Admittedly, the FIR was got registered by Harpal Singh (brother of deceased Mahipal Singh) and not by PW-2 Sumer Singh. Since Harpal Singh was not an eye-witness, he truthfully mentioned in the FIR that the accident had taken place with an unknown vehicle. According to the statement of PW-2 Sumer Singh, he was seated at a tea stall when the accident took place and he noted the number and make of the offending vehicle. His statement under Section 161 Cr.P.C. has also been recorded on the same date i.e. 31.12.2015. Thus, on the basis of preponderance of probabilities, the claimants have succeeded in proving the accident with the offending vehicle. The finding in this regard of the learned Tribunal cannot be faulted. No other point has been argued.

The appeal is without any merit and is dismissed.

CM-7720-CII-2021

Since the main case stands dismissed, the present application is also dismissed.

October 28, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No