

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

**FAO No.238 of 2021 (O&M)
Date of Decision: July 05, 2021**

United India Insurance Company Limited

.....Appellant.

VERSUS

Hanso Devi and others

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Satpal Dhamija, Advocate for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

CM-2707-CII-2021

Application has been filed for condonation of delay of 405 days
in re-filing the appeal.

Keeping in view the facts and circumstances explained in the
application, the same is allowed. Delay of 405 days in re-filing the appeal,
is, hereby, condoned.

FAO-238-2021

Appellant-insurance company is aggrieved against the award
dated 10.09.2019 passed by Motor Accident Claims Tribunal, Hisar and has
filed the present appeal under Section 173 of Motor Vehicles Act, 1988.
Vide the impugned award, compensation of Rs.9,56,121/- has been awarded
by apportioning the same as 40% and 30% each to the wife, son and mother
of deceased Sunder Lal, respectively.

Counsel for the appellant has vehemently argued that a DDR was lodged on 14.12.2017 after the accident taken place on 13.12.2017 and the FIR in question came into picture only on 04.03.2018 (Ex.P7).

It is not disputed that application has been given by Sunil Kumar son of the deceased on 26.02.2018 (Ex.P1) to Superintendent of Police, Hisar, on the basis of which FIR was lodged. It is also matter of fact that the driver of the offending vehicle Ashok Kumar-respondent No.5 has been charge-sheeted for the offences punishable under Sections 279 and 304-A of Indian Penal Code (Ex.P8) for his rash and negligent act, which led to the death of the deceased. It has also been recorded by the Tribunal that the said driver had not stepped into the witness box to show that he had represented to any authority regarding his innocence and false implication. The argument, thus, raised that the DDR, which has been recorded that there was no fault, as such, on the part of the driver of the offending car, is of no help. The accident had taken place by the use of the motor vehicle. The offending car had hit the scooty from behind leading to the deceased receiving multiple injuries and succumbing to his injuries. Two other persons namely Pappu alias Kuldeep and Jaipal were also riding on the same scooty.

Eyewitness Pappu @ Kuldeep PW1 has, as such, been examined, deposing in his deposition as to how the accident took place, in support of the claim petition. Pendency of the criminal proceedings and the fact of filing application to Superintendent of Police, Hisar was proved by examined PW2 Constable Gulab Singh and therefore, from the

preponderance of evidence on record, the Tribunal has rightly come to the conclusion that the accident in question took place on account of rash and negligent act on the part of the driver of the offending car.

It is settled principle of law that the factum of accident and negligence has not to be proved beyond reasonable doubt as in criminal cases, as has been laid down by Hon'ble Apex Court in case of **Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another 2021 (1) SCC 171**. In such circumstances, the argument that the finding recorded on issue No.1 on the basis of evidence led is not made out merely because of delay in registration of the FIR on the part of police authorities and the right of the claimants to seek compensation cannot be denied.

Coming to the quantum of compensation, deceased Sunder Lal was aged 50 years at the time of accident as per the post-mortem report (Ex.P10) issued by Civil Hospital, Hansi. Since there was no proof of income of the deceased, as such, his income was assessed by taking the notification issued by the Government of Haryana under the Minimum Wages Act, which was around Rs.8000/- per month. The dependency has been assessed by imposing a cut of 1/3rd and the multiplier of 13 was applied. Under the other heads of loss of Estate, Consortium and funeral expenses, a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively were allowed. The hospital and medical bills were exhibited by the claimants to the sum of Rs.54,641/-, which was also granted.

In these circumstances, this Court is not inclined to interfere in

the just and adequate compensation that has been awarded to the claimants.

Accordingly, the present appeal is dismissed in limine.

July 05, 2021
Sachin M.

(G. S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>