

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

**FAO No.1020 of 2020 (O&M)
DATE OF DECISION : 13.09.2022**

United India Insurance Company LimitedAppellant

versus

Seema and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

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ALKA SARIN, J. (Oral)

The present appeal has been preferred against the award dated 22.10.2019 passed by the Motor Accident Claims Tribunal, Hisar.

The brief facts relevant to the present *lis* are that on 22.12.2017 Upender son of Rajender Singh had gone to Gurugram in connection with some personal work and after completing his work he was returning to Rohtak in his Ford Figo car bearing registration No.HR12T-8407. At about 1.00 am (midnight) after crossing the chowk of Village Jahangirpur on Gurugram-Jhajjar Road he was going towards Jhajjar side, a Swift car bearing registration No.HR-80B-6688 was also

going ahead of his car and a truck was coming from Badli side and going towards Jhajjar side. The driver of the truck in order to stop his truck by the side of the road suddenly turned his truck towards left side, as a result of which the truck struck the Swift car from behind on the driver side. After causing the accident, the driver of the truck ran away from the spot. Upender chased the said truck and tried to stop the truck. The driver of the truck did not stop his truck, Upender noted the registration number of the truck as HR-61B-1169. Thereafter, Upender reached the place of the accident and saw that the driver of the car was stuck in the car on his seat. With the help of passers-by, the injured was taken to the Civil Hospital, Jhajjar. On enquiry, the injured disclosed his name as Radhey Shyam and thereafter the relatives of Radhey Shyam were informed. During treatment Radhey Shyam succumbed to his injuries. The legal heirs of deceased Radhey Shyam filed the present claim petition alleging that the accident took place due to the rash and negligent driving of the truck bearing registration No.HR-61B-1169. FIR No.1110 dated 22.12.2017 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 at Police Station Jhajjar against respondent No.4 herein on the statement of Upender.

A claim petition was filed by the claimants/respondent Nos.1 to 3 herein. It was averred in the claim petition that the deceased was 31 years of age and was earning Rs.60,147/- per month as he was serving in JCB India, Headquarter Plant at Ballabgarh in the Grade of DM. The claim petition was contested by the driver and the owner,

respondent Nos.1 and 2 before the Tribunal, by filing a joint written statement wherein it was averred that no cause of action had arisen and that the claim petition was bad for mis-joinder and non-joinder of necessary parties. The factum of the accident was denied. It was further submitted that the driver of the truck (respondent No.4 herein) was having a valid and effective driving licence and the truck was insured with the United India Insurance Company Limited. The Insurance Company also contested the claim petition by taking the usual pleas. Additionally, the factum of the accident was also denied.

The Tribunal, on the basis of the pleadings of the parties and the evidence led, awarded a compensation of Rs.92,34,896/- to the claimants-respondent Nos.1 to 3 herein. Aggrieved by the said award, the present appeal has been preferred by the Insurance Company.

Learned counsel for the appellant would contend that the accident took place due to the negligence of the deceased in as much as he did not maintain a safe distance from the truck. No argument has been raised on the point of quantum of compensation awarded to the claimants. The learned counsel has further pointed out that the entire amount stands paid to the claimants.

Heard.

In the present case, the respondent Nos.4 and 5 i.e. the driver and the owner of the truck as well as the appellant-Insurance Company have denied the factum of the accident. The ground now being

raised by the learned counsel for the appellant that the accident took place due to the negligence of the deceased cannot be accepted in as much as that was neither the ground raised in the reply nor at the time of arguments before the Tribunal. It is trite that no amount of evidence can be looked into in the absence of pleadings. In the present case, admittedly, there are no pleadings qua any negligence on the part of the deceased. Further, as per the facts narrated in the award, the truck struck the Swift car from behind, hence, the question of the driver of the Swift car maintaining a safe distance from the Truck did not arise.

In view of the above, there is no merit in the appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.09.2022
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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