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THE NEW INDIA ASSURANCE COMPANY LTD. **..Appellant**

KAMLESH AND ORS ..Respondent

Present: Mr. Pradeep Kumar, Advocate
for the appellant.

While assailing the findings of the fact arrived at by the Tribunal, the Insurance Company calls into question the correctness of the award passed by the Motor Accident Claims Tribunal, Bhiwani on 18.11.2021. The Tribunal has allowed the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of the death of late Sh. Udham Singh in a automobile accident.

This Bench has heard the learned counsel representing the Insurance Company and with his able assistance perused the the judgment passed by the Tribunal along with the depositions of Rajesh, the eye-witness who appeared as PW-3 as well as depositions of PW-6. It is the case of the claimants that when on 17.08.2015, late Sh. Udham Singh was travelling on his motorcycle No.HR-17-9962, at 08:00 a.m., the vehicle bearing HR-18B-1566 (car) driven by Naveen Kumar at a high speed in a rash and negligent manner hit the motorcycle of the deceased. Due to that impactful hit, the motorcycle along with Sh. Udham Singh fell down and he received injuries on the head as well as on the various other parts of the body, whereas, Naveen fled away from the spot of the aforesaid accident. Late Sh.

Udham Singh was immediately shifted to Sarvodaya Hospital, Hisar, and

on the information sent by the hospital, a police official visited hospital, but Udham Singh was not fit to make a statement. The FIR was registered on the statement of Sh. Rajesh on the 22.08.2015, the day late Sh. Udham Singh was expired. It is the case of the Rajesh that he witnessed the accident.

This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

The learned counsel representing the appellant contends that the offending vehicle bearing No.HR-18B-1566, has been wrongly involved in the accident due to collusion between the claimants and the owner of the offending vehicle i.e. HR-18B-1566. He submits that the FIR was registered after a period of 5 days from the accident, wherein, it was stated that the accident was caused by an unknown vehicle. He submits that the vehicle was involved in the accident after a period of three months.

Sh. Rajesh has appeared in evidence as PW-3. He has stated that he had seen the accident and on his information, the FIR was registered, as Sh. Udham Singh has died.

The learned counsel representing the appellant has read over the statement of Sh. Rajesh. It is evident that despite the opportunity given, the learned counsel representing the Insurance Company failed to cross-examine the witness in order to solicit information as to how Sh. Rajesh came to know of the vehicle after a period of three months. The Insurance Company has also not led any evidence to prove collusion between the claimants and owner of the offending vehicle. Consequently, the conclusion drawn by the Tribunal cannot be said to be erroneous. It is the responsibility of the learned counsel representing the Insurance Company to cross-examine the witness by putting searching questions in order to prove his case.

Furthermore, a police official has appeared as PW-6 and he has stated that on the application of Rajesh, the notice dated 20.11.2015, was sent to the owner, who on appearance disclosed the name of the driver.

The police after conclusion of investigation has already presented the challan against Naveen Kumar.

In view of the aforesaid, no ground to interfere is made out.

Dismissed.

The amount Rs.25,000/- deposited in the Court while filing the appeal be remitted to the Tribunal for disbursement.

All the pending miscellaneous applications, if any, are also disposed of.

March 28th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No