

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

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**FAO-1658-2022 (O&M)
Date of decision: 13.12.2022**

New India Assurance Co. Ltd.Appellant
Versus
Meena Kumari and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rahul Pathania, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

The insurance company is in appeal before this Court against the award dated 03.01.2022 passed by learned Motor Accidents Claims Tribunal, Rohtak (for short, 'the Tribunal') wherein respondent No.6-Ram Dhan was found to have been negligent while driving the offending vehicle i.e. truck bearing registration No.NL-02Q-3636 and causing accident in question on 04.11.2018 as a result of which deceased Ram Karan Biddu (hereinafter referred to as 'the deceased') died.

The insurance company is primarily challenging the impugned award on the ground that the Tribunal while deciding the issue of negligence failed to appreciate that no cogent much less convincing evidence had been brought on record from which it could be even remotely inferred that the deceased was travelling in Swift Dzire Car bearing registration No.HR-12AC-9374 (hereinafter referred to as 'Swift Dzire') at the time of the alleged accident and still further the offending vehicle while jumping the divider had hit the Swift Dzire before ramming into Cruiser Jeep bearing registration No.HR-69B-3006 (hereinafter referred to as 'Cruiser Jeep').

Learned counsel vehemently argued that just two days

prior to the accident in question, as per information taken from IIB Data, the Own Damage Claim of the Swift Dzire was lodged on 02.11.2018. Hence, it was clearly indicative of the fact that the offending vehicle had not hit the Swift Dzire. It was further submitted that even in FIR No.445 dated 04.11.2018 lodged under Sections 379, 337, 304-A and 427 IPC at Police Station Sadar, Gohana (Ex.P2) which was lodged after the accident in question, there was no mention whatsoever of the offending vehicle hitting the Swift Dzire. Rather, it had been only stated therein that the offending vehicle after crossing over the divider had hit the Cruiser Jeep. Learned counsel vehemently urged that just to extract compensation from the insurance company, the Swift Dzire had been planted in the case in hand and still further a concocted story put forth that the offending vehicle after jumping the divider had hit the Swift Dzire and thereafter rammed into the Cruiser Jeep.

I have heard learned counsel and perused the relevant material on record.

This Court, after hearing learned counsel and on a perusal of the material on record, finds no merit in the instant appeal and the submissions made by the learned counsel. It is a matter of record and has not been disputed by the learned counsel as well, that the deceased died at the spot. The ill-fated Swift Dzire too was found at the spot of the accident. Merely because there was no mention made in the FIR in question (Ex.P2) qua the offending vehicle hitting the Swift Dzire and thereafter ramming into Cruiser Jeep would not in any manner raise any suspicion qua the involvement of the offending vehicle in the accident

in question. It may be pointed out here that in the final report presented under Section 173 of the Cr.P.C. (Ex.P3) it was clearly mentioned that the accident in question had taken place due to the involvement of two vehicles i.e. Swift Dzire being driven by Satish Kumar and another vehicle i.e. truck bearing registration No.NL-02Q-3636 driven by respondent No.6-Ram Dhan. In this background, the best witness to demolish the case of the claimants would have been its own driver i.e. respondent No.6 who, however, admittedly did not even step into the witness box. Hence, the Tribunal rightly drew an adverse inference against him. It cannot be digested and believed that just to extract compensation the Swift Dzire would have been planted at the spot of accident. Still further, the FIR in question was a prompt one and it has not been disputed by the learned counsel on a pointed query that before removing the dead body of the deceased to the hospital from the spot of accident, an inquest was carried out wherein the presence of the Swift Dzire as also the other two vehicles including the offending vehicle clearly stands reflected. In addition, the alleged eye witness PW2 Satish Kumar has given a vivid account of the mode and manner of the accident in question. This Court, thus, has no hesitation in holding that the Tribunal had not erred in holding respondent No.6 responsible for causing the accident in question on account of his rash and negligent driving.

Accordingly, the instant appeal being devoid of any merit is dismissed.

13.12.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No