

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3346-2022 (O&M)

DATE OF DECISION: AUGUST 2, 2022

UNITED INDIA INSURANCE COMPANY LTD. ...APPELLANT

VERSUS

SIMARJEET KAUR & OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR.NITIN GUPTA, ADVOCATE FOR THE APPELLANT.

MANOJ BAJAJ, J.(ORAL)

The appellant-insurance company is aggrieved against the award dated 13.1.2021, passed by the Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal'), whereby it has awarded a compensation of Rs.21,70,000/- to the claimants, and fastened liability, jointly and severally upon the appellant, driver and owner of the offending vehicle.

Briefly, the facts of the case are that on 13.2.2016, truck bearing registration No.PB-10FF-9955 (offending vehicle) driven by respondent No.1-Manpreet Singh in a rash and negligent manner came from wrong side of the road and collided head-on with an oil tanker bearing registration No.PB-03Y-9070 driven by Baldev Singh, and resulted in multiple injuries to Baldev Singh. He was taken to Civil Hospital, Bathinda and thereafter he was shifted to Max Super Speciality Hospital, Bathinda, being critically injured. He was operated upon but he could not survive and succumbed to his injuries on 22.2.2016 at Max Hospital, Bathinda.

On account of death of Baldev Singh, the claimants-appellants filed a claim petition unde Section 166 of the Motor Vehicle Act, 1988 and claimed a compensation of ₹50 lakhs alongwith interest @ 18% per annum.

Notice of the claim petition was served to the respondents, however, respondents No.1, 2 (driver and owner respectively, of the offending truck) and respondent No.4 (owner of oil tanker) did not appear and were proceeded against ex-parte.

Respondent No.3-United India Insurance Company contested the claim by filing written statement and raised preliminary objections of maintainability, *locus standi* and on merits, pleaded that no accident took with truck No.PB-10FF-9955 and prayed for dismissal of the claim petition.

The Tribunal after appreciating the evidence on record, allowed the claim petition and held respondents No.1 and 2 liable to pay the compensation jointly and severally and respondent No.3-insurance company was directed to pay the awarded compensation at the first instance, with a right to recover the same from respondents No.1 and 2. Hence this appeal.

Learned counsel for the appellant-insurance company has argued that the Tribunal while deciding the issue relating to the liability towards payment of compensation to the claimants has erroneously decided against the insurance company by ignoring the contributory negligence on the part of the victim, who was driving the oil tanker. He submits that the

offending vehicle driven by respondent No.1 was moving on the left side of the road and the offending vehicle driven by the victim came on the opposite side resulting in accident and death of Baldev Singh. In support of his argument, he has relied upon the enquiry report by the DSP (Police), Ex.RW1/A to submit that as per the report, the victim himself was negligent in driving the oil tanker, therefore, the finding returned by the Tribunal is not sustainable.

Apart from this, he has invited the attention of the Court to the cross-examination of CW-2 Labh Singh, the alleged eye witness of this accident, wherein he admitted that he reached the spot after the accident, and on that day it was a foggy weather. Learned counsel has argued that the evidence of Labh Singh relating to accident and negligence of driver of offending vehicle, cannot be relied upon therefore, the finding deserves to be set aside.

After hearing learned counsel and considering the evidence on record, this Court finds that the enquiry report by the DSP (Police), Ex.RW1/A relied upon by appellant is not a convincing piece of evidence to hold that victim Baldev Singh was negligent in driving the oil tanker, as during the course of hearing, it is stated by learned counsel that cancellation report founded on the said enquiry report was not accepted by the Magistrate and further investigation was ordered. There is no evidence on record to indicate that the vehicle driven by Baldev Singh crossed the divider to hit the offending vehicle driven by Manjit Singh. Therefore, it cannot be said that the victim was also negligent in causing the accident.

Further a perusal of the impugned award shows that the Tribunal has carefully examined the facts, evidence on record and rightly returned the finding against the appellant.

No other point was argued by the learned counsel.

Resultantly, no case is made out for interference by this Court, as the impugned award does not suffer from any perversity.

The appeal is dismissed.

August 2, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No