

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

FAO-2177-2022(O&M)

Date of decision: 04.08.2022

IFFCO TOKIO General Insurance Company Limited

....Appellant

Versus

Amandeep Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The Insurance Company assails the correctness of the award passed by the Motor Accident Claims Tribunal on 21st January, 2022.

2. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook as well as the record of the Tribunal, which was requisitioned.

3. The claim petition was filed on account of death of Late Sh. Hardev Singh in an automobile accident on 6th June, 2018. Late Sh. Hardev Singh was returning after dropping his sister in a Santro car whereas another car coming from the opposite side is stated to have caused the accident, resulting in his death. In order to prove their case, the claimants examined the deceased's father Sh.Lakhwinder Singh as PW2. He states that he was waiting for his son for visiting Kaithal to buy medicines when the accident took place near the bus stop of Village Bastali on Karnal Kaithal Road. It is further stated that the car coming from opposite direction came on the wrong side and caused the accident.

Learned counsel representing the appellant has made the

following submissions:-

a) the insured car namely HR-05AB-3354 was falsely involved in the accident in order to get compensation from the Insurance Company.

b) The Tribunal has wrongly relied upon the minimum wages fixed by the Deputy Commissioner of the District while ignoring the minimum wages notified under the Minimum Wages Act, 1948 by the Commissioner (Labour).

4. On reading of the deposition of Sh. Lakhvinder Singh, it is evident that during the cross examination, the learned counsel representing either the respondent No.1 and 2 (owner and driver) or the Insurance Company failed to impeach his credibility despite the lengthy cross examination. Sh. Lakhvinder Singh stated that he saw the driver at the spot of occurrence but at that time, he did not have knowledge of his name and identification, however, when he was called to the police station for identification, he has identified the driver.

5. The FIR was registered on 6th June, 2018 itself. Learned counsel representing the Insurance Company submits that the Company had appointed an investigator, who has reported that the vehicle was implicated in order to get compensation from the Insurance Company. He submits that the aforesaid report has been proved by examining the investigator Shri Om Dutt Sharma as RW 1. He also relies upon a report in the newspaper wherein it was recorded that on account of an accident with a tree, someone has died.

6. It may be noted here that driver of the HR-05-AB-3354 (Surinder Kumar) has not appeared in evidence. The Insurance Company did not summon him as a witness. Moreover, on a careful reading of report of the investigator, it is evident that he verified the facts from the various persons who were likely to be present at the time of accident. However, the Insurance Company has not examined any witness from the place of accident. The report submitted by the alleged investigator has also not been put to Sh. Lakhwinder Singh in order to solicit his response.

7. The Tribunal is required to decide such cases on preponderance of probabilities. On the one side, there is deposition of the deceased's father, who is alleged to be present at the spot and therefore, is an eye witness. On the other hand, there is report by a private person engaged by the Insurance Company. It was a duty of the Insurance Company to prove its version before the Tribunal. The report is only a conclusion arrived at by a private person, who has been engaged by the Insurance Company. This cannot be treated to be conclusive.

8. Consequently, this Court does not find any substance in the first argument of the learned counsel representing the appellant.

9. With respect to the second argument, it may be noted that ultimately Late Sh. Hardev Singh was maintaining a motor car. The Tribunal has assessed his income at Rs.13,915/- per month i.e Rs.464/- per day ($13915/30 = 463.8$). The Tribunal has relied upon the minimum

wages of an unskilled labourer fixed by the Deputy Commissioner of the District. Hence, this Court does not find it appropriate to interfere with the aforesaid findings.

10. Dismissed.

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

04.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE