

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

217

FAO No. 3594 of 2017 (O & M)

Date of decision : 15.11.2022

United India Insurance Company Limited, Chandigarh**.....Appellant****Vs.****Anchai and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Ram Avtar, Advocate, for the appellant
Mr. Jainainder Saini, Advocate, for respondents no.1 and 2

TRIBHUVAN DAHIYA, J. (Oral)

1. This is an appeal filed by the Insurance company for setting aside the award dated 17.1.2017 passed by the Motor Accident Claims Tribunal, Hisar (in short 'the Tribunal') on the ground that the offending vehicle has been falsely involved in the accident to claim compensation. It was a case where initially an untraced report was filed by the police with respect to the offending vehicle, which established that the vehicle was falsely involved at a later stage. He also contends that the eye witness did not testify in the criminal trial, and, therefore, could not have been believed by the Tribunal.

2. Perusal of the award passed by the Tribunal shows that Issue No.1 was framed regarding the offending vehicle and its negligent driving. The same is as under:

1. Whether accident in question causing the death of Kuldeep son of Sh. Narsingh was occurred due to rash and negligent driving of the offending vehicle i.e. HR-70-A/6294 by respondent no.1? OPP

It has come on record that after investigation of the case the police found the

driver and the offending vehicle involved in the accident. Resultantly, an FIR bearing No. 32 dated 3.2.2014 (Ex.P-1) under Sections 279, 304-A IPC in Police Station Agroha, was registered against the driver of the offending vehicle. It has been proved by examining ASI Ashok Kumar as PW-2. He has also proved that report under Section 173 Cr.P.C. (Ex.P-3) was filed against the driver-respondent no.3, who faced criminal prosecution. Besides, there is evidence of the eye-witness Narsingh, PW-1, on record who has testified that driver of the offending vehicle was rash and negligent and hit his car/offending vehicle from behind against the motor cycle being driven by the deceased, resulting in multiple grievous injuries to Kuldeep, who later died on that account. The witness further testified that the number of offending vehicle came to his knowledge later from its driver, and his supplementary statement (Ex.R-4) to that effect was recorded by the police. During investigation, statement (Ex.R-3) of owner of the offending vehicle was also recorded, who stated that at the time of accident his car was driven by respondent no.3. Besides, even in the initial statement to the police leading to registration of the FIR, the eye witness categorically mentioned that colour of the car was White. This fact stands established by registration certificate (Ex.R-16) of the offending vehicle, that the car is of White colour. The Tribunal has held that merely because supplementary statement of the complainant was recorded after about four months of the accident, it cannot be stated that the offending vehicle was falsely involved in the accident in collusion with the claimants. It is a case where owner, driver and the Insurance company have effectively contested the claim by filing separate written statements and by leading evidence. Mere non-appearance of an eye witness in the criminal trial cannot be a ground to dispute his testimony before the Tribunal, which has to record the findings on

the basis of the evidence adduced before it. It is a settled preposition of law that evidence in criminal trial has no bearing on proceedings before the Tribunal.

3. Besides, it has been settled by this Court in ***Girdhari Lal v. Radhey Sham and others*** 1993 (2) PLR 109, that where driver of the offending vehicle is facing criminal trial for causing the accident due to rash and negligent driving, it is safe to hold that the accident took place due to his negligence.

4. This is a case where factum of the accident as well as involvement of the offending vehicle duly stand established on record by way of testimony of the eye witness, PW-1, and other documentary evidence, including the FIR and report under Section 173 Cr.P.C filed against the driver-respondent no.3 in the criminal case. Therefore, there is no merit in the argument raised by learned counsel for the appellant/Insurance company disputing the factum of accident. The Tribunal's findings holding the accident to have been caused due to rash and negligent driving of the offending vehicle by respondent no.3, cannot be faulted with as the same are based on preponderance of probabilities, that is the standard of proof for the Tribunal to base its findings on as per the settled preposition of law.

5. Therefore, there is no ground to interfere with the well reasoned findings recorded by the Tribunal.

6. Dismissed.

7. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

15.11.2022

Ashwani

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