

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

**FAO-5116-2022 (O&M)
Decided on:-05.12.2022**

United India Insurance Co. Ltd.

....Appellant..

vs.

Jinder Pal Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gopal Mittal, Advocate for the appellant.

HARKESH MANUJA J. (Oral)

By way of present appeal, challenge has been made to an award dated 07.09.2022 passed by the court of learned Motor Accident Claims Tribunal, Fazilka (for short' "Tribunal"), vide which, the claim petition filed at the instance of respondents No.1 and 2/claimants, has been partly allowed.

2. Brief facts of the case are that respondents No.1 and 2 filed a claim petition before the learned Tribunal with the averments that their son, namely, Surinder Singh @ Chhinda died in an unfortunate road accident, on account of rash and negligent driving of offending vehicle i.e. Canter bearing registration No.PB04M 5679, being driven by respondent No.3. Based on the aforesaid facts, respondents No.1 and 2 prayed for grant of compensation of Rs.50 lakhs.

3. Upon notice of the claim petition, appellant-Insurance Company appeared and disputed the factum of accident, besides even agitating the involvement of the offending vehicle in question therein. The learned Tribunal, vide its award dated 07.09.2022, after holding respondent No.3-driver, herein to be rash and negligent while driving the offending

vehicle, resulting into death of Surinder Singh @ Chhinda, awarded a sum of Rs.12,42,600/- along interest @ 7.5 per annum from the date of filing of claim petition till realization.

4. It is the aforesaid award dated 07.09.2022, which has been impugned by way of present appeal at the instance of appellant-Insurance Company.

5. Learned counsel for appellant-Insurance Company vehemently submits that the claim petition was filed at the instance of respondents No.1 and 2 in collusion with respondents No.3 and 4 herein i.e. driver and owner of the offending vehicle. He further submits that in fact vehicle in question was not involved in the accident.

6. Learned counsel for the appellant further submits that collusion was apparently made out from the fact that neither of the claimants, who appeared in the trial arising out of the same accident did not support the prosecution and even failed to identify the driver i.e. respondent No.3, which resulted into his acquittal by the court of learned Sub-Divisional Judicial Magistrate, Abohar, vide judgment dated 13.02.2020.

7. I have heard, learned counsel for the appellant and gone through the paper book.

8. On a specific query put to learned counsel for the appellant, he has not been able to show that the plea of collusion between the claimants and the driver/owner of the offending vehicle if was ever raised before the learned Tribunal in the written statement filed at the instance of appellant-Insurance Company. In the absence of any plea regarding collusion having been raised at the instance of appellant-Insurance Company, there was no occasion or opportunity for respondents No.1 and 2/claimants herein to raise any kind of rebuttal to the same and especially, when no such issue

was ever pressed by the appellant-insurance company before the learned Tribunal.

9. As regards the acquittal of respondent No.3-driver by the court of learned Sub-Divisional Judicial Magistrate, Abohar vide its judgment dated 13.02.2020, arising out of the same incident based on FIR No.45 dated 22.03.2019, it may be pointed out here that in view of the settled proposition of law, principles of appreciation of evidence are totally distinct in the proceedings being carried out under the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) and the criminal trial from the FIR arising out of the same incident/accident. In the proceedings under the Act, appreciation of evidence has to be based upon preponderance of probabilities whereas under the criminal trial arising out of the same incident based on an FIR, appreciation of evidence has to be made on the principle of proof beyond reasonable doubt.

10. I have gone through the findings of learned Tribunal on issue No.1, which relates to the factum of accident and the involvement of the offending vehicle, besides the rash and negligent driving of respondent No.3. The said finding, recorded in favour of respondents No.1 and 2 is based on proper and valid appreciation of evidence led in this regard, which therefore warrants no interference. No other point has been argued.

11. In view of the aforesaid discussion, finding no merit in the present appeal, the same is hereby dismissed in limine with no orders as to costs.

12. Pending applications, if any, shall stand disposed of.

05.12.2022
sonika

(HARKESH MANUJA)
JUDGE

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