123 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-403-2023 (O&M)
Date of decision:23.01.2023

THE NEW INDIA ASSURANCE COMPANY LTD.
....Appellant

Verses

SARABJEET SINGH AND OTHERS ...Rrespondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinod Chaudhary, Advocate
for the appellant.

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HARSIMRAN SINGH SETHI, J (Oral):

The present first appeal has been filed challenging the award dated 01.11.2022 by which, the claim petition filed by the claimant was accepted in respect of the death of Balwinder Kaur which she suffered on 09.04.2022.

Learned counsel appearing on behalf of the appellant-Insurance Company submits that in the present case, neither the owner nor the driver appeared before the Tribunal so as to contest the claim against the claimants which shows that there was no accident which has actually occurred and the claim was raised in collusion with the driver and the owner of the vehicle in question.

Qua the said arguments the learned counsel for the appellant very fairly conceded that there was an FIR No.20 dated 09.04.2022 under Section 304-A, 279, 427 of Indian Penal Code registered at Police Station Mehta, Amritsar qua the said incident. Once, the said incident finds mention in the FIR, the objection/ground raised by the Insurance Company that the claim was filed in collusion, is not at all correct, hence cannot be accepted.

Learned counsel for the Insurance Company further raised another argument that the driver was not having valid driving licence and therefore once the vehicle was being driven contrary to the provision of Motor Vehicle Act, the Insurnace Company is not liable to pay the claim as being raised by the claimant. In this regard, it may be noticed here that an issue was framed being issue Nos. 2 to 4 whether the driver had a valid driving licence or not. The finding recorded by the Tribunal qua the said issue is as under:

> "*These issues are taken up together as the same can be disposed off by single discussion. The onus to prove these issues was on the respondents. However, these issues were not pressed during the course of the arguments. Accordingly, these issues are decided agaisnt the respondents and in favour of the claimants.*

A bare perusal of the above finding shows that the said issue was never pressed by the counsel appearing on behalf of the Insurance Company despite the same was prayed in said petition. Once, the counsel for the Insurnace Company concedes that the said issue was never pressed before the Tribunal, the said issue cannot be taken as a ground to challenge the award in the present appeal.

Further, no evidence has been brought to the notice of this Court to show that the driver was not having the valid licence. The averment of the appellant that in the absence of the driver participating in the claim petition, the Insurance Company had no mode to ascertain whether the driver was holding a valid licnece or not.

This argument itself shows that even as of now, the Insurnace

Company is not sure whether the driver was holding a valid licence or not as they do not have any information qua the said aspect.

Keeping in view the above, no ground is made out for interference by this Court qua the award dated 01.11.2022.

The present appeal is dismissed.

<u>CM-1355-CII-2023</u>

As the main appeal has been dismissed, application for granting stay is also dismissed.

(HARSIMRAN SINGH SETHI)
23.01.2023 **JUDGE**
neelam

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*