

coming from Ambala side, hit Sanjeev Kumar while overtaking truck from wrong side and he died on the spot as he received multiple serious head injuries.

3. The Insurance Company has filed the present appeal on the ground that FIR with regard to the accident in question was registered on 16.02.2022 at about 17:15 hours, on the statement of Sant Singh – elder brother of deceased, against the vehicle bearing registration No.HR-26-RJ-0474 but the present petition has been filed by the claimant against vehicle bearing registration No.HR-26-BJ-0474 and no explanation has come on record as to why vehicle number was changed. Sant Singh – author of the FIR did not step into the witness-box. He is brother of the deceased and son of the claimant. So, the best evidence has been withheld by the claimant. The claimant failed to prove that the alleged accident in question took place with vehicle bearing registration No.HR-26-BJ-0474. The claimant examined one Narinderpal Singh (CW-2) as witness of the claimant to prove the accident in question. His statement does not inspire confidence. He stated in his cross-examination that he left the spot before arrival of the police. He was not a summoned witness. There is no document on the record to show that he was present at the spot. The amount of compensation is on higher side and interest @ 9% per annum in case of failure to pay the amount of compensation within three months, instead of 6% is also higher and against principles of law.

4. I have heard submissions of learned counsel for the appellant – Insurance Company and also perused the record.

5. FIR No.25 dated 16.02.2022 (Ex.C-5), under Sections 279, 304-A

IPC was registered at Police Station Shambu against unknown person, in which vehicle bearing registration No.HR-26-RJ-0474 was shown involved in the accident in question. During investigation, it was found that vehicle bearing registration No.HR-26-BJ-0474 was involved in the said accident and Mann Singh was driving the said vehicle. He was also owner of the said vehicle. The police, after completion of investigation, filed challan under Section 173 Cr.P.C. (Ex.C-4) against Mann Singh. Admittedly, he has been charge-sheeted and is facing trial for causing accident in rash and negligent manner, thereby causing accident resulting in death of Sanjeev Kumar.

6. The proceedings before the learned Tribunal are summary in nature and the claimant is required to establish the case on the touchstone of preponderance of probability. The claimant also examined Narinderpal Singh (CW-2) as eye-witness, who deposed about causing of accident by Mann Singh while driving the Innova in rash and negligent manner, thereby resulting in death of Sanjeev Kumar. He faced the wrath of cross-examination. There is no ground to disbelieve his version.

7. On the other hand, no evidence has been led by the respondents before the Tribunal to rebut the evidence led by the claimant. Even driver/owner Mann Singh did not dare to step into the witness-box to even deny the accident. Since he has not stepped into the witness-box, so, adverse inference is required to be drawn against him. Reliance in this regard has been placed on judgments namely **Kirpa Singh vs. Ajaypal** reported as **AIR 1930 Lahore-I**, wherein this Court has held that failure of a party to go into witness box to prove his interest in the suit, he being the best person to give evidence, the fact goes strongly against him. Similarly, analogy were

propounded in Allaha Ditta vs. Mist Bhajen reported as AIR 1930 Lahore 401, wherein it was held that if a party does not appear in the witness box, circumstances going strongly against him and he runs a great risk, if he does not enter into the witness box to give evidence in his case upon facts which are directly within his knowledge and which related to the matter in controversy. This analogy of law has stood test of the time and is being followed even 80 years thereafter. It has been reiterated in Singh Ram vs. Gian reported as 1997(2) RCR (Civil) 125 by holding that where the defendant himself had not appeared in the witness box to controvert the averments of the plaintiff, adverse inference has to be drawn against such litigant, as per settled law, who takes risk by not appearing in the witness box to rebut the case of the applicant. Likewise, in Ishwar Bhai C Patel vs. Harihar Behara reported as J.T.1999 (2) S.C. 250, it has also been held that if a party does not enter the box either to prove its own case or to state against the case of opposite party, the adverse presumption has to be on against such party. The whole case of plaintiff remained unrebutted and unchallenged.

8. Learned Tribunal, while passing the impugned Award, has held that even the driver/owner has not denied the accident and there is no ground to doubt the credibility of testimony of Narinderpal Singh (CW-2). Learned Tribunal has placed reliance on case Bimla Devi and others vs. Himachal Road Transport Corporation and others reported as 2009 (13) SCC 530 (Supreme Court) and also on case Sudama Devi and others vs. Kewal Ram and others reported as 2008(1) RCR (Civil) 444 (P&H).

9. In the FIR, vehicle number of offending vehicle is written as

No.HR-26-RJ-0474. During investigation, it was found that the number of offending vehicle was No.HR-26-BJ-0474. There is difference of one letter. There is no doubt that on seeing the accident, one is baffled and possibility of such minor mistakes cannot be ruled out. Moreover, it is not the case of respondents that number No.HR-26-RJ-0474 is also of Innova Car. Thus, there is no doubt that vehicle number No.HR-26-BJ-0474 was involved in this accident.

10. Since there is sufficient evidence on the file to come to the conclusion that the accident was caused by respondent no.2 – Mann Singh, while driving the Innova bearing registration No.HR-26-BJ-0474 in rash and negligent manner, thereby causing death of Sanjeev Kumar, so, non-examination of his brother namely Sant Singh would have no adverse effect on the case of the claimant. Issue no.1 has rightly been decided in favour of the claimant.

11. Learned Tribunal has rightly taken the income of the deceased to be Rs.9,000/- per month, which an unskilled labourer was getting at the time of alleged accident. In view of age of the deceased, multiplier of 17 has been taken into consideration. Since deceased was unmarried, 50% amount was deducted as personal expenses and only 40% amount has been added by way of future income. A sum of Rs.30,000/- has been granted under funeral expenses and loss of estate. I do not find that the Award passed in the aforesaid manner is on the higher side. The Tribunal has further held that in case, payment is made within three months, interest would be charged @ 6% per annum and in case of failure, the claimant would be entitled to claim interest @ 9% per annum.

12. Learned counsel for the appellant – Insurance Company has relied upon National Insurance Company Limited vs. Keshav Bahadur reported as 2004 ACJ 648, in which it is held that the Tribunal should not award higher or lower rate of interest and the said discretion has to be exercised judiciously and not arbitrarily.
13. As per Section 168(3) of the Act, when an award is made, the person who is required to pay the amount in terms of such award, is liable to pay within thirty days of the date of pronouncement of the award by the Claims Tribunal. In the present case, learned Tribunal has held that in case, payment is made within three months, interest would be charged @ 6% per annum and in case of failure, the claimant would be entitled to claim interest @ 9% per annum. So, learned Tribunal, in its wisdom, has awarded interest in such a manner so as to expedite the execution by the Insurance Company to disburse the awarded amount in time and the poor old lady, whose son has died, is not further compelled to file execution petition.
14. In view of what has been discussed in the preceding paragraphs, I do not find any illegality in the interest part, so awarded by the learned Tribunal. Accordingly, this appeal is without any merit and the same is hereby dismissed in limine.
15. Pending applications, if any, shall stand disposed of along with this judgment.

January 24, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.