

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:14.10.2015

1. FAO No.2338 of 1999 (O&M)

Prem Lata and others Appellants

Versus

Rakesh Jain and others Respondents

2. FAO No.2339 of 1999 (O&M)

Shanti Devi Appellant

Versus

Rakesh Jain and others Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. S.S. Salar, Advocate for the appellants.

Mr. Rohit Goswami, Advocate for Mr. Vinod Chaudhri,
Advocate for Insurance Company.

Navita Singh, J. (Oral)

A motor vehicle accident took place on 31.12.1994 as a result of which Jai Pal and Ashok Kumar died and two claim petitions were filed which were decided vide common award dated 2.11.1998. The legal representatives of deceased- Jai Pal filed FAO No.2338 of 1999 while the legal representatives of the other deceased filed FAO No.2339 of 1999. Both the claim petition were dismissed. Hence, the appeals.

Counsel for the appellants argued that the Tribunal wrongly held that the driver of the Maruti Car was not negligent and had not caused the accident. It was contended that there was evidence that the truck going ahead of the car had suddenly stopped because the driver applied brakes and

driver of the car could not control the vehicle and hit the truck from behind. The driver of the car was, therefore, negligent as he was supposed to take due care and caution to avert the accident and should have kept a safe distance. Reliance was placed on **The Oriental Insurance Company Limited v. Ponnamma and others, 2011(4) AICJ 203, Mela Ram v. Mohan Singh and others, AIR 1978 P&H 323, Sunehra Singh v. Baljit Singh, 2001 AIHC 1841, Smt. Pamela Gambhir v. Smt. Santosh Nayyar, 2001(2) R.C.R. (Civil) 337 and Jagat Singh and others v. Sawal Singh, 1971 ACJ 66.** This Court is not bound to follow the view of Co-ordinate Benches of this Court. Also the facts in those cases were different.

In **Mela Ram (supra)**, it was a case where the true cause of accident lay solely within the knowledge of the opposite party who caused it. Also here, there is evidence that the driver of the car tried to steer the vehicle to avert the accident but still the accident occurred. The contention of counsel for the appellant that the car was at such a high speed that one side of it was ripped off because of the force of the impact, is not vouched safe from any material on record. Also it cannot be a universal rule that in each and every case, the driver of the vehicle plying behind would be negligent.

Furthermore, in the present case, the Tribunal passed a detailed award properly discussing the evidence stating that according to the evidence, the truck driver was negligent in suddenly applying the brakes and also it was nowhere pleaded at all in the claim petition that the accident had taken place on account of negligence of the driver of the car in which the deceased were travelling. The negligence was attributed to the truck driver. Merely using the words that the driver of the car could not control

the vehicle would not mean that he was negligent. On account of sudden application of brakes by the truck going ahead, the driver of the car tried to avoid the accident but in such situations, the driver going behind gets perplexed and despite best intention on his part, the accident happens. It, therefore, could not be said that the car driver was entirely negligent in causing the accident. Even otherwise, there being no categorical pleadings, it can be said that the claimants could not put forth a good case pleading negligence of the car driver, much less proving it.

The claim petitions were rightly dismissed. No error is found in the award. Both the appeals are dismissed.

14.10.2015
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**(NAVITA SINGH)
JUDGE**