

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

(1)

**FAO No.5245 of 2015 (O&M)
Date of Decision: August 13, 2015.**

Oriental Insurance Company Ltd

.....APPELLANT(s).

VERSUS

Ram Murti and others

.....RESPONDENT(s).

(2)

FAO No.5246 of 2015 (O&M)

Oriental Insurance Company Ltd

.....APPELLANT(s).

VERSUS

Rajender and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mrs. Manjari Nehru Kaul, Advocate
for the appellant (s).

SURINDER GUPTA, J.

CM-16324-CII-2015 & CM-16331-CII-2015

Heard.

There is delay of 12 days in filing appeal bearing No.FAO-5245-
2015 and 24 days in filing appeal bearing No.FAO-5246-2015.

It is submitted that the delay took place while compiling all the

documents and draft the appeal.

In view of the submissions made by learned counsel for the appellant and the facts mentioned in the applications, the same are allowed and the delay in filing the above mentioned appeals is, hereby, condoned.

FAO-5245-2015 and FAO-5246-2015

Heard.

Learned counsel for the appellant argues that the Tribunal has held the appellant Oriental Insurance Company Ltd liable for 50% of the compensation holding that the accident had taken place due to rashness and negligence of the drivers of bus bearing registration No.RJ-31PA/1515 and truck bearing registration No.RJ-19GA/6845. The appellant is the insurer of the truck. In the claim petition filed by Kamlesh, one of the injured bearing MACT Case No.116 of 2012, it was pleaded that driver of the bus was driving the bus in a rash and negligent manner at a very high speed and despite request by the passengers to drive the bus at a moderate speed, he did not care and ultimately, came on the wrong side and hit the truck. In this manner, the driver of the truck was not liable for the accident and Tribunal had reached the conclusion to this effect, which is not based on evidence.

Perusal of the award shows that the Tribunal while reaching the conclusion about the contributory negligence has relied on the statement of Kamlesh, who appeared as PW1 and Rajinder Kumar as PW2. Both were travelling in the bus at the time of accident and have stated that driver of the truck was rash and negligent and hit the bus. The Tribunal also took note of the police investigation in the criminal case where the negligence of drivers of both the vehicles was found.

Learned counsel for the appellant argues that site plan was produced on record showing location of the bus and the truck after the accident. That site plan clearly reflects that the truck was on *kacha* path while the bus was on the wrong side of the road.

The Tribunal has also examined the above aspect of the case and has rightly reached the conclusion that after the accident generally colliding vehicles shift to different directions. It is usually found that the position of the vehicles with the impact of the collision is never the same after the accident at which they were moving before the accident.

Perusal of the award passed by the Tribunal shows that the Tribunal has committed no error of law or fact while reaching the conclusion about joint liability of the insurance companies of bus and truck and directing both the insurance companies to share compensation amount in equal shares of 50% each.

These appeals have not merits, as such, dismissed in limini.

August 13, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE