THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 3721 of 2011 (O&M)
Date of decision: March 22, 2016

Oriental Insurance Company Limited
...Appellant
Versus
Mitlesh and others
...Respondents

(2) FAO No. 3722 of 2011 (O&M)

Oriental Insurance Company Limited
...Appellant
Versus
Ram Nath and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Jagjit Singh, Advocates, for
Mr. Ashwani Talwar, Advocate,
for the appellant in both the cases.

Mr. SS Dinarpur, Advocate,
for respondent No.1 in both the cases.

Mr. Raj Karam Singh, Advocate,
for respondents No. 2 and 3 in both the cases.

K. KANNAN, J. (Oral)

1. The appeals are at the instance of the insurance company pointing out that the Tribunal was wholly at error in awarding compensation in a situation when the motor cyclist and the pillion rider, who were the

claimants dashed the motor cycle from behind against a truck which was going ahead. There was no negligence that could be attributed to the driver of the truck to make its insurer liable. Both the claimants had fractures and incurred medical expenses. The Tribunal awarded Rs. 94,864 for the motor cyclist and Rs. 1,17,547/- for the pillion rider.

2. The learned counsel for the insurance company points out from the evidence given by the motor cyclist (PW.1), namely, admitting to the fact that if he had maintained some distance, he could have avoided the accident. His evidence runs thus:-

> "It was summer days when the alleged accident had taken place. I have licence to drive the motor cycle but I have not brought the same today. The truck was being driven in slow speed. It is correct that our motor cycle has struck behind the on going truck. I was driving my motor cycle at the speed of 35 kilometer per hour. The truck was also same speed. I had informed the police after about fifteen days and prior to that I never went to the police to inform that accident. I had not disclosed the name of the driver of the truck to the police. It is correct that if I had maintained the proper distance from the truck in question, the accident would have avoided. It is incorrect to suggest that I was solely responsible for the accident in question. It is also incorrect to suggest that I had got a registered false FIR against the truck."

His own daughter has given evidence admitting to the fact that his father lost the control and struck it from behind. Her evidence reads thus:-

> "It was summer days when the accident had taken place. It is correct that the motor cycle driven by my father had struck in the back of the truck. It is also correct that my father could not control the motor cycle and struck it in the truck on behind."

4. Although the element of negligence could be at all times inferred when there is an accident involving collision of two vehicles, exception would be when the claimants themselves have admitted that the motor cyclist contributed to the accident. It was a case of motor cyclist dashing against a truck loaded and suffering injuries in the accident. Rule 23 of the Rules of the Road Regulations 1989 expressly provides that a driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from the other vehicle to avoid collision. Rule 23 of the Regulations reads as under:-

> "**23. Distance from vehicles in front.—**The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

5. There has been evidently a case of poor driving and judgment by the claimant who was the driver of the motor cycle and it was his negligence that was responsible for the accident. The pillion rider cannot have a claim against the other vehicle against which the motor cyclist had dashed. Her own claim could be against her father who was driving the motor cycle and not against the insurer of the vehicle.

6. The liability cast against the insurer is untenable. The awards are set aside and the appeals by the insurers are allowed.

March 22, 2016 **(K.KANNAN)**
prem **JUDGE**