

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

FAO-5966-2012 (O&M)

Date of decision: 25.04.2016

National Insurance Co. Ltd. ...Appellant

Versus

Sharda and others ...Respondents

FAO-5967-2012 (O&M)

National Insurance Co. Ltd. ...Appellant

Versus

Smt. Urmila and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashwani Talwar, Advocate and
Mr. Akash Sridhar, Advocate for the appellant.

Ms. Kamalpreet, Advocate
for respondent Nos.1 to 3/claimants
in FAO No.5967 of 2012.

Mr. Parveen Kaushik, Advocate for
Mr. K. S. Malik, Advocate
for respondent No.1/claimant
in FAO No.5966 of 2012.

Mr. Saurabh Mohunta, DAG, Haryana

JITENDRA CHAUHAN, J. (ORAL)

By way of this single judgment I shall dispose of the
aforesaid two appeals.

The present appeals have been filed by the appellant-

Insurance Company, challenging the impugned Award dated

01.08.2012, passed by learned Motor Accidents Claims Tribunal, Rohtak (for brevity 'the Tribunal').

The learned counsel for the appellant contends that there was a head on collision between Truck and Bus on pucca portion in the middle of the road and if the driver of the motorcycle had kept a safe distance from the bus, going ahead of him, the accident could have been avoided. Thus, it is a case of contributory negligence of drivers of all the three vehicles and the appellant is not liable to apportionment beyond 25%.

On the other hand, the learned counsel for the respondent-claimants and State, submit that there was sole negligence on the part of the offending vehicle i.e.Truck bearing registration No.RJ-14-2G-4234 as it was coming on wrong side and struck against the Haryana Roadways bus, which was going ahead of the motorcycle. Therefore, the learned Tribunal has rightly passed the impugned award.

I have heard learned counsel for the parties and perused the case file.

The contention of the learned counsel for the appellant is that there was contributory negligence on the part of the drivers of the bus and of the motorcycle. However, the appellant has not led oral or documentary evidence, on the basis of which, it can be inferred that the accident occurred due to contributory negligence of the parties. In fact, as per the version of the FIR and statement of the eye-witness, namely,

Nitin, it is duly established that the offending vehicle i.e. Truck, was

being driven negligently and was coming on wrong side. Further, as per Ex.P5 (Copy of order dated 03.10.2009 passed in FIR No.152) and Ex.P6 (Copy of order dated 02.03.2010 passed in FIR No.152), the driver of the offending vehicle is facing the trial. Moreover, no site plan has been brought on record. In the absence of the site plan, it is difficult to appreciate and accept the submission of the learned counsel for the appellant. Hence, the learned Tribunal has rightly held that the accident took place due to the rash or negligence driving of the offending vehicle.

Dismissed.

The statutory amount, if any, deposited by the appellant-Insurance Company be placed at the disposal of the Tribunal for reimbursement.

25.04.2016

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**(JITENDRA CHAUHAN)
JUDGE**