

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

**FAO No.1846 of 2014 (O&M).
Date of Decision: 19.05.2016.**

Bharti Axa General Insurance Co. Ltd.Appellant.

VERSUS

Mahenoor Begum and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. Nitish K. Vasudeva, Advocate for respondents No.3 and 4.

SNEH PRASHAR, J.

Assailing the award dated 19.11.2013 passed by learned Motor Accident Claims Tribunal, Chandigarh (for short, “the Tribunal”) in MACT Case No.12/179 of 2010 filed by the claimants (respondents No.1 and 2 herein), the appellant-insurer of the vehicle involved in the accident i.e. Tata-407, filed the instant appeal.

In the claim petition, the averments of the claimants were that on 26.11.2009 Mohd. Razak (since deceased) alongwith his brother Mohd. Azad were coming from Azad Market, Delhi by means of Tata-407 No.PB-06D-2214 (for short, “Tata-407”) being driven by Manjit Singh. At about 5:10 a.m., when they reached near Tepla Bus Stand, their Tata-407 struck

into a stationary truck bearing No.PB-12G-4645 (hereinafter referred to as “the offending truck”) from the backside as it was parked on the wrong side of the road without any indication. As a result of accident, Mohd. Razak suffered serious injuries which led to his death.

Alleging that the accident occurred due to negligent parking of the offending truck, the claimants claimed compensation from the driver, owner and insurer of the offending truck, who were impleaded as respondents No.1 to 3 in the claim petition filed by them. The respondents contested the petition. On the rival contentions of the parties, issues were framed and both the parties were given opportunity to adduce evidence to discharge the onus of the respective issues on them. Considering the evidence brought on record and the submissions made by learned counsel for the parties, learned Tribunal partly allowed the petition with costs and awarded compensation to the tune of Rs.9,89,800/- alongwith interest at the rate of 6% per annum to the claimants. All the three respondents were held jointly and severally liable for payment of the compensation amount.

Feeling aggrieved by the impugned award, the appellant-insurer of the offending truck preferred the instant appeal.

The submissions made by Mr. Subhash Goyal, learned counsel for the appellant-insurance company and Mr. Nitish K. Vasudeva, learned counsel for respondents No.3 and 4 (owner and driver of the offending truck) have been heard and record perused.

Learned counsel for the appellant-insurance company raised two fold arguments. His initial stress was that it was a case of contributory

negligence and learned Tribunal erred in holding the driver of the offending truck solely responsible for causing the accident. He contended that admittedly the offending truck was in stationary condition and it was Tata-407, in which the deceased was travelling, which rammed into the offending truck from the backside. It was for the driver of Tata-407 to drive cautiously and in a moderate speed. The manner in which the accident took place proves that the driver of Tata-407 himself was rash because of which he was unable to notice existence of the stationary truck on the road and he struck into the same. When a vehicle is parked and another vehicle comes and collides with the same, it is the driver of the vehicle which hits into the stationary vehicle, who can be said to be responsible for the accident. To support his argument, learned counsel relied upon **Raj Rani and others v. Oriental Insurance Co. Ltd. and others, 2009 ACJ 2003.**

The other argument raised by learned counsel was that while assessing the monthly income of the deceased, learned Tribunal erred in adding 50% of the income towards future prospects which is in contravention to the law laid down in **New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593.**

The accident occurred on 26.11.2009 at 5:10 a.m. Needless to say that at that hour of the day in the end of the month of November in northern India, it is still quite dark. Mohd. Azad, brother of the deceased, who witnessed the accident, stepped into the witness box during evidence as CW1 and testified that the offending truck was parked on the wrong side of the road that too without any indication. Meaning thereby that not only

the offending truck was wrongly parked on the road, there was also nothing to indicate its existence to the moving traffic. The parking lights or the indicators were not on. The statement of CW1 Mohd. Azad remained unrebutted as neither driver nor owner of the offending truck appeared in the witness box to controvert his version.

The findings in Raj Rani and others' case (supra) were based on the facts of that case. The case in hand is on a different footing. The offending truck was parked on wrong side, its lights were not on and nothing had been put up to indicate its presence. In such circumstances, no negligence could be attributed to the driver of Tata-407. From that it follows that the accident occurred solely due to rash and negligent driving/parking of the offending truck and the finding of learned Tribunal to that effect is upheld.

The second argument of learned counsel for the appellant that addition to the extent of 50% to the actual income of the deceased computing future prospects was wrong, has no merit. In **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170**, Hon'ble Supreme Court has observed as under:-

“Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the

age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

In the above premise, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

19.05.2016.
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