

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

FAO-1105-2016 (O&M)

Date of decision: 12.2.2016

New India Assurance Company Ltd.

...Appellant

Versus

Sushma and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rajneesh Malhotra, Advocate for the appellant

SNEH PRASHAR, J.

This is an appeal challenging the award dated 20.10.2015 passed by learned Motor Accidents Claims Tribunal, Sonapat (in short 'the Tribunal'), awarding a compensation of Rs.5,65,500/- to the claimant-mother of deceased Sunny, a boy aged 22 years, who lost his life in a motor accident.

The facts relevant for disposal of the appeal are that on 19.6.2014, Sunny as a conductor and Sanjay being the driver were going from Ambala to Meerut in a canter bearing registration No. HR45-A-3802, loaded with plywood board. On the way at about 4.00 AM, when they reached near Hasanpur crossing on GT Road, their Canter struck into a stationery vehicle bearing registration No. UP17T-6438 (hereinafter referred to as 'the

offending vehicle') from the backside. Deceased Sunny got entangled into the vehicle and suffered multiple serious and grievous injuries. The stationary vehicle was parked on the road without putting on its indicators or reflectors. Injured Sunny was rushed to Civil Hospital, Sonapat but his condition being serious, he was referred to PGIMS Rohtak from where he was taken to Safdarjang Hospital, Delhi and then to other hospitals but he succumbed to the injuries. First Information Report No.180 dated 19.6.2014 under Section 283/ 337 of the Indian Penal Code was registered at Police Station Murthal against respondent No.3- driver-cum-owner of vehicle No.UP-17T-6438. After death of injured Sunny, Section 304A IPC was added to the case.

Claimants-respondents No.1 and 2, parents of the deceased filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') for compensation. Learned Tribunal holding the offending vehicle liable for causing the accident awarded a sum of Rs.5,65,500/- to the claimant-mother of the deceased. The appellant- Insurance Company being the insurer of the offending truck was held liable for payment of the awarded amount.

The submissions made by learned counsel for the appellant have been heard and record perused.

At the very outset, learned counsel for the appellant-insurance company argued that it was a case of contributory negligence because the accident had taken place due to the negligence on the part of the driver of the Canter also. The canter had struck into the stationery truck- offending truck from the backside, which was on its left side of the road, having reflectors and indicators on when the accident took place. Moreso, it was stated by PW2 Sanjay driver of the canter that the head lights of his Canter were on when he hit into the offending vehicle from the backside. When the headlights of his Canter were on, he should have seen the (offending truck) very easily and would not have rammed into it. Also, the offending truck was parked on the extreme left hand side of the road. Still when the canter struck into the offending truck from the backside, the fact put together clearly indicate that the accident occurred due to negligence of the driver of the canter and there was no fault on the part of driver of the offending truck. At the most it was a case of composite negligence and therefore, the appellant is not liable to pay compensation.

For deciding the claim petition, one of the issue framed by learned Tribunal was as under:-

“Whether the death of Sunny son of Ashok Kumar is the result of accident, which took place on 19.6.2014 at about 4 AM due

to rash and negligent driving of offending vehicle bearing No.UP17T-6438 by its driver i.e. respondent No.1?

The onus to prove the above issue was upon the claimants. They examined PW2 Sanjay, who being the driver of the Canter was a natural eye witness of the accident. He testified that he was driving the Canter at a moderate speed observing the traffic rules. The offending truck was parked in the first lane on GT Road without using any indicator or reflector. The head lights of his Canter were on and immediately when he could see the existence of the offending truck on the road, he tried his best to avoid the accident, but hit into the said vehicle from the backside.

No evidence was led by the driver, owner or the insurer of the offending truck. So much so, that even the driver of the offending truck, who was an equally good eye witness of the accident did not opt to step into the witness box to make at least a self serving statement. His absence from the witness box is another important factor for drawing adverse inference against him. The accident occurred at 4.00 AM in the morning. Even if it was month of June, at that hour of the day, it must be dark and since the offending truck was parked without putting on its indicator, reflector or back lights or something conspicuous to make its presence on the road visible, there is no reason to not accept the

testimony of PW2 Sanjay that he was unable to notice the existence of the offending truck on the road and when he actually saw the same, he tried to avoid the accident, but unable to do so. The distance from where he might have seen the offending truck may not have given him sufficient chance to avoid the accident. In such set of facts, it was indeed difficult for the driver of the Canter to immediately stop the running vehicle or change its direction.

Neither there was any fault on part of the driver of Canter, nor it was a case of composite negligence.

In the above premises, there is no merit in the present appeal and as such, the same is hereby dismissed.

12.2.2016
gsv

(SNEH PRASHAR)
JUDGE