

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 6392 of 2016 (O&M)

Date of Decision: 24.7.2017

Oriental Insurance Company Limited

.....Appellant

Versus

Rohit Arora and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

ANITA CHAUDHRY, J

CM-21364-CII-2016

The application is allowed for the reasons stated therein.

The delay of 05 days in filing the appeal is condoned.

FAO-6392-2016 (O&M)

This appeal is by the insurance company disputing the findings recorded on issue No. 1.

The insurance company claims that the accident took place on account of sole negligence of the driver of the car which was driven by Rohit and the Tribunal had wrongly placed liability on the driver of the truck. An alternative plea has also been taken that it was a case of contributory negligence.

The record has been summoned.

I have heard the counsel for the insurance company.

The accident occurred on 31.12.2014. Ashok Kumar had gone

for some work at Kurukshetra where he met Lokesh and Rohit. They started

their journey back to Karnal. Rohit and Lokesh were in a separate car which was ahead of them. At about 6.00/6.30 P.M., a truck bearing registration No. PB-10-EH-0255 came from behind and overtook the car driven by Ashok and hit the car driven by Rohit. Both Rohit and Lokesh sustained multiple injuries. Lokesh succumbed to the injuries later on.

Two claim petitions were filed, one by the parents of Lokesh and other by Rohit. Both the claim petitions were allowed. The plea taken by the insurance company was rejected.

The submission on behalf of the insurance company is that a wrong plea had been taken and the truck driver was not at fault and the car driver was at fault as the car had come at a high speed and crossed over the divider and hit the truck on the front side.

Counsel for the appellant further urges that they have placed the photographs on record which would show that the front portion of the car was damaged whereas the case of the claimants was that the truck had hit the car from behind and that belies their story. The counsel had referred to the photographs filed along with the appeal.

I have gone through the documents available on the lower Court record. The mechanical examiner report is not available. There is no evidence from the side of the respondents. The insurance company is only relying upon the investigators report which would not be enough to accept their plea. The liability was upon the insurance company to prove that the accident had happened in a different manner than the one disclosed in the FIR. The truck driver failed to step into the witness box to give his side of the version and I find no infirmity in the finding recorded by the Tribunal

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

July 24, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No