

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

308 (3cases)

Date of Decision : 20.11.2018

1) FAO No.6240 of 2011 (O&M)

The Oriental Insurance Company Ltd.

..... Appellant

Versus

Rani Devi and others

..... Respondents

2) FAO No.6241 of 2011 (O&M)

The Oriental Insurance Company Ltd.

..... Appellant

Versus

Balwinder Kaur and others

..... Respondents

3) FAO No.7189 of 2011 (O&M)

IFFCO TOKIO General Insurance Co. Ltd.

..... Appellant

Versus

Balwinder Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. R.C. Gupta, Advocate
for the appellant (in FAO-6240 & 6241-2011)
for respondent No.4 (in FAO-7189-2011).

Mr. Neeraj Khanna, Advocate
for Mr. Ravinder Arora, Advocate
for the appellant (in FAO-7189-2011).

Respondents No.1 to 5 & 9 proceeded
against ex-parte (FAO-6240-2011).

Respondents No.1 to 3 proceeded
against ex-parte (FAO-6241-2011).

Ms. Deepika, Advocate for
Mr. Ranjivan Singh, Advocate
for respondents No.6 & 7 (in FAO-6240-2011)
for respondents No.4 & 5 (in FAO-6241-2011)
for respondents No.5 & 6 (in FAO-7189-2011)

Mr. G.D. Gupta, Advocate
for the respondent No.8 (in FAO-6240-2011)
for the respondent No.6 (in FAO-6241-2011)
None for respondents No.1 to 3 (in FAO-7189-2011)

AJAY TEWARI, J. (ORAL)

These three appeals have been filed against the award 05.08.2011 whereby the Motor Accident Claims Tribunal, Kurukshetra had awarded compensation for the death of Ashok Kumar and Manpreet Singh.

Brief facts of the case are that the two deceased were travelling on a motorcycle on 01.08.2010 and when they were crossing the bus stand Ismailabad, four wheeler bearing Registration No.HR-45-1951, insured with the Oriental Insurance Company, was standing in the middle of the road and causing nuisance to the travelling public because neither there was any indication nor tree branches or stone were placed in its surrounding. In the meantime, a truck bearing Registration No.PB-12L-9156, insured with the IFFCO Tokio General Insurance Company, came being driven at a high speed in a rash and negligent manner and hit the motorcycle of the two deceased and caused their death. The Tribunal held both the four wheelers guilty of contributory negligence equally and passed the award.

Mr. R.C. Gupta, Counsel for the Oriental Insurance Company states that even if the facts as mentioned are taken as gospel truth yet there was no occasion of the Tribunal to have apportioned the liability at half

because it was an accident which was taken place in broad day light.

Mr. G.D. Gupta, Counsel for the IFFCO Tokio General Insurance Company has argued that had the four wheeler not been parked in the middle of the road the accident could not have taken place.

Having heard the counsel, I find that the arguments advanced by both the counsel are too extreme. No doubt, the vehicle was parked wrongly but that does not excuse rash and negligent driving. In the circumstances, I allow the appeals bearing FAO No.6240 and 6241 of 2011 filed by the Oriental Insurance Company and reduce the contributory negligence of the vehicle insured by it to 35% instead of 50%.

The third appeal bearing FAO No.7189 of 2011 has been filed by the IFFCO Tokio General Insurance Co. Ltd. challenging the quantum of compensation on the ground that Manpreet Singh was a bachelor and thus the multiplier had to be taken as per the age of the parents of the deceased. However, today he has fairly accepted that this ground is no longer available in view of the judgment of the Supreme Court in the matter of *Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*. Consequently, this appeal is dismissed.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

November 20, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No