

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

FAO-2887 of 2012 (O&M)
Date of decision: 05.12.2018

The New India Insurance Company
Versus ...Appellant

Pritam Singh and others
...Respondents

FAO-2888 of 2012 (O&M)

The New India Insurance Company
Versus ...Appellant

Mohinder Kumar Budania @ Mohinder Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajneesh Malhotra, Advocate for the appellant.

None for respondent No.1.

Mr. Pardeep Sehrawat, Advocate
for respondent Nos.2 & 3.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.2887 and 2888 of 2011 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.2887 of 2012.

The sole submission made by counsel for the appellant-Insurance Company is that as driver of Maruti Omni bearing registration No.HR-37-T-0741 driven by injured Pritam Singh did not maintain

sufficient distance from tipper bearing registration No.HR38-J-9174 going ahead, the present is a case of contributory negligence of alleged offending vehicle and vehicle driven by injured Pritam Singh and accordingly, the insurance company is not liable to pay compensation to Pritam Singh to the extent of negligence attributable to him.

Pritam Singh, injured filed application for grant of compensation decided vide award dated 22.12.2011 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been awarded to both the injured namely Mohinder Kumar and Pritam Singh. Pritam Singh appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PB. In para 1 of the affidavit, he has deposed to the following effect:-

“That on 08.09.2007, the deponent along with some workers of Kamla Dial Factory, Parwanoo were coming from Fun Republic, Manimajra to Parwanoo on the taxi (Maruti Omni) No.HR37T-0741. The deponent was plying his Taxi. The deponent was driving his Maruti Omni van in a very normal and moderate speed. At about 10.30 p.m. when they reached near HMT petrol pump, a tipper bearing registration No.HR38-J-9174 which was being driven by respondent No.1 in a very high speed and there is no back light and brake light of the vehicle and the said respondent No.1 at once applied the brakes. As a result of which, the vehicle of the deponent hit in the tipper from back side.”

In his cross examination, he would depose that truck bearing registration No. No.HR38-J-9174 was going ahead about 15-20 feet. He was driving his van at the speed of 40-45 km per hour. He has denied the suggestion that he could not see the truck and without applying brakes

with his own negligence, he struck his van against offending truck from behind.

Perusal of the statement of Pritam Singh makes it evident that there is no challenge to his testimony that the offending vehicle did not have back light and brake light meaning thereby that Pritam Singh could not even know that the vehicle going ahead had applied brakes requiring him to take reasonable care to avoid collision with the offending truck. The driver of offending vehicle did not appear in the witness box to counter case of the claimant(s) particularly testimony of Pritam Singh. It is none of the plea of respondents before the Tribunal that the present is a case of contributory negligence or driver of Maruti car can be attributed negligence for the occurrence. On the contrary, the driver and owner of offending vehicle have altogether denied the factum of accident.

On due consideration of testimony of Pritam Singh along with discussion made hereinbefore, I find it difficult to accept contention of the insurance company that findings of the Tribunal on issue No.1 are liable to be modified or contributory negligence is required to be attributed to Pritam Singh, driver of Maruti car bearing registration No.HR-37T-0741.

This apart, even if Pritam Singh can be attributed contributory negligence, it would be of no consequence for the case of Mohinder as Mohinder can maintain his claim against either of the joint tort-feasors even without impleading one of them as a party. Examined

from any angle, contention raised by the insurance company is not meritorious and is liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

05.12.2018
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No