

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 02.02.2018

(i) F.A.O. No. 3772 of 2012 (O&M)

Shriram General Insurance Company LimitedAppellant

Versus

Smt. Murti and others
.....Respondents

(ii) F.A.O. No. 3773 of 2012 (O&M)

Shriram General Insurance Company LimitedAppellant

Versus

Amila and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant-Insurance Company.

Mr. S.K. Yadav, Advocate
for respondents No. 1, 2, 4 and 7 (FAO No. 3772 of 2012).

Mr. M.S. Randhawa, Advocate
for respondents No. 1 and 2 (FAO No. 3773 of 2012).

AVNEESH JHINGAN, J.(oral)

The Insurance Company has filed the present appeals against the common award dated 10.03.2012 passed by the Motor Accidents Claims Tribunal, Narnaul (for short 'the Tribunal').

On 24.10.2009 there was a motor vehicular accident involving Alto Maruti Car bearing registration No.HR-99-9191 and Dumphier truck bearing registration No. HR-55-H-1296. The accident occurred near Jainpur crossing. Both the vehicles were coming from opposite directions. As a result of the accident, Jagdish Parsad driver of the Car and Nihal Singh

passenger in the Car lost their lives.

The claim petitions were filed by the legal heirs of the deceased under Sections 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal by a common award awarded compensation of Rs.6,16,816/- to the legal heirs of Nihal Singh and Rs.14,60,000/- to legal heirs of Jagdish Parsad. The Tribunal after appreciating the facts and considering the evidence produced held that the accident was result of rash and negligent driving of the Dumper.

Since both the appeals raise a common question and arise out of the same accident, these are being decided together.

The grievance of the Insurance Company in appeals is that the accident occurred due to contributory negligence of both the drivers. The Tribunal erred in not appreciating in proper prospective the statement of PW2 Indraj Singh. The contention raised is that it was head-on collision as a result of contributory negligence.

There is no quarrel on the proposition that in proceedings under Section 166 of the Act, the onus to prove rash and negligent driving of the offending vehicle is casted upon the claimants.

Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

In the present case Indraj Singh deposed as PW2. He was eye witness to the accident. He was travelling in the Car. As per his statement the Car was being driven at a reasonable speed and on the left side of the

road. The offending vehicle was being driven in a rash and negligent manner. The Dumper on reaching near the Car suddenly turned towards the car and therefore, the front portion of the driver's side of the dumper hit the front portion of the car. As a result of the accident, the front portion of the Car was totally damaged.

Reliance of the counsel for the Insurance Company is on certain portion of the cross-examination of PW2. He relies upon the fact stated that road was wide enough for two vehicles could pass at the same time. Further his reliance is that the front portion of the offending Dumper struck against the front portion of the Alto Car. The accident was head-on collision. Reliance on the said portion of cross-examination is misplaced. These sentences cannot be read in isolation. Apart from the contents of examination-in-chief, in the rest of the cross-examination, PW2 has specifically denied the suggestion that Car was being driven rashly and negligently. He denied the suggestion that the offending truck was not being driven in rash and negligent manner and at a high speed.

There is another aspect of the matter that one of the main witness i.e. the driver of the dumper was never examined before the Tribunal by Insurance Company. The claimants on one hand were able to prove the rash and negligent driving of the offending vehicle but on the other hand there was not even an iota of evidence available on record to attribute contributory negligence.

If the argument of learned counsel for the appellant is accepted, the result is that in every case of head-on collision it would be a contributory negligence. It cannot be so it will depend on the facts of each case.

In the case in hand it is not a case where both the vehicles have struck in middle of each other for head-on collision. As per the statement of eye witness, the offending vehicle turned towards the Car because of which the right portion of both the vehicles struck each other.

Learned counsel for the appellant placed reliance upon the decision of Hon'ble the Apex Court in *Bijoy Kumar Dugar Versus Bidyadhar Dutta and others, 2006(3) SCC 242.* The said decision is not applicable in the present case. In the case before Hon'ble the Apex Court the evidence to prove that offending vehicle was being driven at abnormal speed was not accepted by the Tribunal. It was not accepted that the offending vehicle was coming in zig-zag manner. Since the Tribunal was not satisfied regarding rash and negligent driving of the offending vehicle on the basis of the evidence produced it was held that it was a case of contributory negligence. Hon'ble the Apex Court upheld the findings of the Tribunal.

In the present case, it has been proved that the accident occurred due to rash and negligent driving of the offending vehicle and there was no evidence to the contrary.

The appeals being bereft of any merits are hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

02.02.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No