

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

FAO-1386-2018 (O&M)

Date of decision:-05.10.2018

National Insurance Company Limited

.....Appellant

versus

Smt. Sunita and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Harjinder Singh, Advocate for the appellant.

TEJINDER SINGH DHINDSA, J.

CM-21355-CII-2018

Application is allowed as prayed for. Copy of the site plan in FIR No.384 dated 16.07.2016 registered at Police Station Sadar, Rohtak, is taken on record at Annexure P-1.

Application disposed of.

Main case

Appellant-Insurance Company has filed the instant appeal against the award dated 03.11.2017 passed by the Motor Accident Claims Tribunal, Rohtak and in terms of which a compensation amount of Rs.3,65,000/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization has been awarded on account of death of Dipanshu.

Counsel submits that the accident in question had taken place on 16.07.2016 at about 9.00 A.M. involving two vehicles i.e. Swift Car bearing registration No. HR-12-Z-1703 and an Eicher Canter bearing Registration No.HR-67-A-4303. Drivers of both the vehicles died in the

accident. Another occupant of the car also died. FIR was registered on the statement of Surender i.e. conductor of the Eicher canter vehicle. The car bearing registration No.HR-12-Z-1703 was insured with the appellant-Insurance Company.

The solitary contention raised by counsel is that the aspect of contributory negligence of the driver of the canter vehicle in the accident has been over-looked by the Tribunal. It is contended that the Tribunal has erred in not considering the evidence of eye-witness PW3 Karampal and who had deposed that both the vehicles were coming from the opposite sides at high speed and that drivers of both the vehicles were negligent and had caused the accident. It is urged that it was a head on collision and due to which both the drivers of the vehicles had died. Counsel argues that the canter vehicle is a transport/goods vehicle which is larger in size and heavier in weight as compared to a Swift car and as such the Tribunal ought to have returned a finding as regards contributory negligence of the Canter vehicle in the accident. Further urged that mere registration of the FIR against the driver of the Swift car would not be sufficient to prove that the accident had taken place on account of rash and negligent driving of the driver of the Swift car.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the appeal.

Undoubtedly, PW3 Karampal who was an eye-witness to the accident had deposed that on the fateful day he was going towards Khanpur from Rohtak in his Innova vehicle and a canter vehicle bearing registration No.HR-67-A-4303, overtook his vehicle and collided with a car bearing Registration No. HR-12-Z-1703 which was coming from the opposite side and as a result of the accident drivers of both the vehicle and

occupants of the car sustained injuries and became unconscious. He had deposed that both the vehicles were being driven in a rash and negligent manner and at a very high speed at the time of the accident. However, the contents of the First Information Report which was lodged by Surender son of Ram Kumar who was the conductor of the canter vehicle reveals that while the canter vehicle was proceeding towards Panipat and reached at Brahmanwas, the Swift Car bearing Registration No.HR-12-Z-1703 came in a rash and negligent manner after crossing the divider onto the wrong side and rammed into the canter vehicle. The Tribunal upon due appreciation of evidence has recording a finding that the accident took place on national highway and there was a divider segregating the highway. Vikas Rose was driving the Swift car which went over the traffic divider and came to the wrong side of the road and where vehicles were plying from Rohtak to Panipat and it is under such situation that the Swift Car suddenly came in front of the Canter vehicle. The finding recorded by the Tribunal that the accident took place due to sole rash and negligent driving of the Swift Car bearing registration No.HR-12-Z-1703 is well-founded.

Even the site plan (Annexure P-1) sought to be relied upon by the appellant company shows the site of the accident. The site plan even reflects the divider. ' Point A' on the site plan has been identified as the place where the Swift Car driver (deceased) was taken out upon having caused the accident. The site plan rather fortifies the finding of the Tribunal that the Swift Car had veered across the divider and had come on the wrong side of the national highway and which in turn resulted in the accident involving the Canter Eicher vehicle.

No other point was urged.

In view of the above, no interference in the matter is warranted.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

05.10.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No