

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:21.5.2018

FAO No. 1860 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Tanuja Sandhu and others

---Respondents

FAO No. 1861 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Sushila Devi and others

---Respondents

FAO No. 1862 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Saravjeet Singh and others

---Respondents

FAO No. 1863 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Saravjeet Singh and others

---Respondents

FAO No. 1864 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Rekha Mittal and others

---Respondents

FAO No. 1865 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Keshav Mittal and others

---Respondents

FAO No. 1866 of 2018(O&M)

National Insurance Company Limited

---Appellant

vs.

Ashok Mittal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Radhika Suri, Senior Advocate
with Mr. M.S.Kanda, Advocate
for the appellant-insurance company

Rekha Mittal, J.

CM No.8016-CII of 2018

Heard.

Allowed as prayed for. Annexures A-1 to A-5 are taken on record
subject to just exceptions.

Disposed of accordingly.

CM No.9524-CII of 2018

Allowed as prayed for. Annexures A-1 to A-6 are taken on record
subject to just exceptions.

Disposed of accordingly.

Main cases

This order will dispose of FAO Nos. 1860 to 1866 of 2018 as these
have emerged out of common award dated 6.1.2018. For the sake of
convenience, facts are taken from FAO No. 1860 of 2018.

Tanuja Sandhu and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) claiming compensation on account of death of Prabhjeet Singh in a motor vehicular accident that took place on 10.2.2016.

The facts relevant for disposal of present appeal are that as per case set up by the claimants, on 10.2.2016, Prabhjeet Singh, Harinder Singh, Gurpal Kaur, Aaditi, Lakhbir Kaur were going in Punto Car bearing No. UP-32GS-2654 from Noida (UP) to Faridkot (Pb.), driven by Harinder Singh at a moderate speed on left side of the road. At about 7/7.15 a.m., they reached GT Road, Nilokheri flyover. Truck bearing No. PB-10CC-0981 was going ahead of aforesaid car. Yoginder Singh, driver of the truck was driving the truck in a rash and negligent manner without observing traffic rules. He suddenly applied brakes of the truck and because of that, car of Harinder Singh struck against back side of the truck. The occupants of the car received multiple injuries. They were shifted to Government Hospital, Karnal where Lakhbir Kaur, Prabhjeet Singh, Harinder Singh, Gurpal Kaur and Aaditi succumbed to the injuries.

In other claim petitions arising out of the same accident in which travellers of Swift car No. HR-60E-0185 sustained injuries out of which Bharat Bhushan, on the steering wheel died whereas Keshav Mittal and Ashok Mittal sustained injuries. As per plea of the claimants in the said case, swift car was going behind Punto car. Due to brakes applied by respondent No. 1, Yoginder Singh their car struck against Punto car resulting in injuries sustained by Bharat Bhushan (since deceased), Ashok Mittal and Keshav Mittal, occupants of swift car.

The Tribunal framed issue No. 1 to the following effect:-

“Whether the accident in question took place on 10.2.2016 in the area of P.S.Butana, Karnal on account of rash and negligent driving of Truck bearing registration No. PB-10CC-0981 being driven by

respondent No. 1 resulting into death of Prabhjeet Singh, Aditi Kumari, Gurpal Kaur, Harinder Singh, Lakhbir Kaur and Bharat Bhushan Mittal and injuries to Keshav Mittal & Ashok Mittal?OPP”

To prove their cases particularly to discharge onus of issue No. 1, Saravjeet Singh PW3, Ashok Mittal PW5, Keshav Mittal PW6 and Rupinder Singh Sandhu PW8 were examined. Yoginder Singh, driver of the offending truck appeared as his own witness.

Having heard counsel for the parties in the light of materials on record particularly testimonies of relatives of occupants of ill fated Punto car and injured victims Ashok Mittal and Keshav Mittal, the Tribunal has held that accident is the result of contributory negligence i.e. 50% attributable to driver of the truck and the remaining 50% to drivers of Punto and swift cars and accordingly, the insurance company has been held liable to pay compensation to the extent of 50% qua five deaths of occupants of Punto car, death of Bharat Bhushan, driver of swift car and injuries sustained by Ashok Mittal and Keshav Mittal.

Counsel for the insurance company has assailed the award primarily qua findings of the Tribunal on issue No. 1. It is argued with vehemence that Saravjeet Singh PW3 and Rupinder Singh PW8 have not deposed that Yoginder Singh, driver of offending truck applied brakes suddenly and caused the accident. It is further argued that even if driver of the truck had applied sudden brakes, it was an obligation of drivers of cars following that truck firstly to maintain sufficient distance and thereafter to take reasonable care to avoid collision. It is argued with vehemence that there is no evidence to show as to what reasonable care was taken by Harinder Singh, driver of Punto car to avoid collision with the truck going ahead, therefore, the Tribunal has gravely erred by attributing 50% negligence to the truck driver. In support of her contention, she has relied upon judgment of the Kerala High Court **Oriental Insurance Company Limited vs.**

Ponnamma and others 2011 (1) KLJ 739.

Another submission made by counsel is that so far as death of Bharat Bhushan and sustaining injuries by Ashok Mittal and Keshav Mittal who were travelling in swift car, admittedly, there was no collision between the truck and swift car, therefore, no compensation can be held to be payable by the insurance company of the truck to the claimants in those petitions. In addition, it is argued that since driver of Punto car has also been attributed negligence but in the claim applications filed qua death of Bharat Bhushan and injuries sustained by Ashok Mittal and Keshav Mittal, driver, owner or insurer of Punto car have not been impleaded as a party, therefore, liability to pay compensation to the tune of 50% qua injuries to the travellers of swift car has wrongly been fastened upon the insurance company.

I have heard counsel for the appellant, perused the paper book particularly the award.

To appreciate contentions of counsel for the appellant, it is relevant to refer to the statements of eye witnesses and injured witnesses examined to discharge onus of issue No. 1. Saravjeet Singh PW3 tendered into evidence his duly sworn affidavit Ex. PW3/A. He has stated that on 10.2.2016 at about 7/7.15 a.m., truck bearing registration No. PB-10-CC-0981 was driven by its driver in rash, negligent and careless manner, right and left side changing the lanes frequently due to which car of deceased Harinder Singh collided on backside of offending truck and the accident occurred. Rupinder Singh Sandhu PW8 also made a statement to the similar effect by way of affidavit Ex. PW8/A. Ashok Mittal one of the injured and occupants of Swift car bearing No. HR-60E-0185 tendered into evidence his affidavit Ex. PW5/A. A relevant extract from his affidavit, reads as follows:-

“At about 7-00/7.15 am when they were on flyover, Nilokheri on G.T.Road, at that time one Car bearing No. UP-32-GS-2654 was

going ahead of them and ahead of said car No. UP-32-GS-2654, the offending truck No. PB-10CC-0981 was going. The driver of the said truck i.e. respondent No. 1 was driving the offending truck No. PB-10CC-0981 in zig-zag manner and then suddenly and abruptly the respondent No. 1 applied brakes of his truck, due to which the car No. UP-32GS-2654 rammed into the said truck. Aforesaid Bharat Bhushan, who was driving the car No. HR-60E-0185 at a moderate speed and was behind the car No. UP-32GS-2654, applied brakes of his car, in order to avoid the collision with the said car but all this happened so quickly that the car of the deceased struck in the back of the car No. UP-32GS-2654. Due to the impact of the accident, the occupants of the aforesaid car No. UP32GS-2654 as well as occupants of the car in which the deponent was travelling received multiple and grievous injuries and said Bharat Bhushan succumbed to the injuries on 16.2.2016 in AIIMS, Delhi.”

Keshav Mittal, another injured also filed his affidavit by way of examination-in-chief and corroborated testimony of Ashok Mittal. Perusal of cross examination of Ashok Mittal and Keshav Mittal would reveal that there was hardly any challenge to their testimonies deposing as to how the accident in question took place. Counsel for the appellant has failed to point out any tangible material brought forth in cross examination of the aforesaid witnesses to substantiate her contention that negligence in causing the accident cannot be attributed to driver of offending vehicle even to the extent of 50%, as has been held by the Tribunal so far as liability of driver, owner and insurer to pay compensation qua deaths of occupants of Punto car.

No doubt, the brakes are meant for use and application in order to meet contingencies or to avoid greater risk or casualties. In the case at hand, Yoginder Singh driver of the offending vehicle examined himself and tendered

into evidence his affidavit Ex. RW1/A. His statement is conspicuously silent that either he applied the brakes or there was a contingency requiring him to apply the brakes suddenly. Testimony of Yoginder Singh is no rebuttal to statements made by the eye witnesses and injured in the case. He has every reason to deny the accident to escape his civil and criminal liability. As a matter of fact, there is no challenge to testimonies of the claimants witnesses that the two cars that followed the truck maintained sufficient distance from the truck as well as inter se Punto car and swift car. There is no evidence on record that Punto car was driven at a high speed and struck against the back side of the truck without any fault attributable to the truck driver. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal attributing 50% negligence to the truck driver for causing the accident/collision between the truck and Punto car.

Indisputably, the Swift car did not strike the truck but it struck on the back side of Punto car. As both the truck driver and driver of Punto car have been attributed negligence to the extent of 50:50, the truck driver cannot escape liability for the accident that resulted because of Swift car striking against Punto car despite efforts by Sh. Bharat Bhushan Mittal to avoid collision with Punto car. With regard to injuries sustained by occupants of Swift car, 50% negligence has been attributed to Sh. Bharat Bhushan Mittal (since deceased), driver of the Swift car. The remaining 50% negligence has to be shared by driver of Punto car and that of the truck. The claimants qua death of Bharat Bhushan Mittal and injuries sustained by Ashok Mittal and Keshav Mittal could seek compensation either against driver, owner and insurer of Punto car or driver, owner and insurer of the truck to the extent of composite negligence attributable to them, as in law claimants have been given option to sue either of the joint tort-feasors. In this view of the matter, findings of the Tribunal holding occupants of the Swift car to claim 50% compensation from driver, owner and insurer of the truck cannot be faulted with.

To be fair to the appellant, counsel has relied upon judgment **Ponnamma and others's case (supra)** to assail findings of the Tribunal on issue No. 1. In the said case, facts are altogether different. One of the contentions raised by the insurance company is that there is no evidence to show the application of sudden brakes by the 2nd respondent and hence, the finding of negligence on the 2nd respondent by the Tribunal was improper. However, in the case at hand, it has been duly proved by occupants of the Swift car (fortunately saved despite receipt of injuries) that driver of the truck applied sudden brakes resulting in Punto car hitting the truck and Swift car following Punto car to hit the Punto car despite reasonable care taken by Sh. Bharat Bhushan Mittal to avoid collision. As has been noticed hereinbefore, testimony of Yoginder Singh driver of offending truck is no counter to case of the claimants and testimonies of the witnesses examined. In this view of the matter, the appellant cannot derive any advantage to its contention from the referred authority.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed. No order as to costs.

Before parting with this order, it is pertinent to mention that the appeals have been disposed of in the light of submissions made by counsel for the insurance company. Any observations made hereinbefore shall not cause prejudice to the claimants if they prefer appeal(s) seeking enhancement of compensation.

(Rekha Mittal)
Judge

21.5.2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No