

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

110 (3 cases)

Date of Decision : 05.07.2018

1) CM-11484-CII-2018 in/and FAO-2966-2018 (O&M)

IFFCO TOKIO General Insurance Company Ltd.

..... Appellant

Versus

Ompati and others

..... Respondents

2) CM-11534-CII-2018 in/and FAO-2978-2018 (O&M)

IFFCO TOKIO General Insurance Company Ltd.

..... Appellant

Versus

Jaiwanti and others

..... Respondents

3) CM-11487-CII-2018 in/and FAO-2967-2018 (O&M)

IFFCO TOKIO General Insurance Company Ltd.

..... Appellant

Versus

Sanotsh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Sachin Ohri, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-11484, 11487 & 11534-CII-2018

For the reasons recorded, the applications are allowed. Delay
of 44 days in filing the appeals is condoned.

FAO-2966, 2967 and 2978-2018 (O&M)

These three appeals have been filed against the three awards which are relating to three deaths in the same accident. Since common question of law is involved all these appeals are decided by the common order.

The claim of the respondents was that three passengers were travelling in a car being driven by one Baljeet Singh. At about 12.00 AM, in the night, the car fell into the canal as a result of rash and negligent driving of said Baljeet Singh. The claim petitions having been allowed the insurance company is before this Court.

The main argument of the counsel is with regard the issue of negligence. As per him, the eye witness (who had also reported the matter to the police) had clearly mentioned in the DDR that he was coming behind the vehicle in question and a stray animal come in front of the vehicle and the sudden appearance of a stray animal had led to this chance accident. As per the counsel, when he appeared as a witness in the present cases, for the first time he took the plea that Baljeet Singh was driving the car rashly and negligently. The contention of the counsel is that the eye witness has resiled from his earlier statement and is therefore not worthy of any credence. He has relied upon the judgment of this court in the matter of ***Pritam Singh vs. Jaswant Singh and others, passed in FAO-1771-1992, decided on 12.01.2016***, wherein this Court has so held.

Even while accepting this proposition of law, the argument of the counsel for the appellant has to be rejected. The trial court had also considered this very argument and had correctly observed that if a person is driving prudently and carefully even the sudden appearance of an animal

can not cause an accident. It is also noteworthy to remember that even on a four lane highway like the Delhi-Chandigarh Highway there is a maximum speed limit of 90. A driver who late at night drives at a higher speed, because there is no other vehicle on road, is still driving rashly and negligently precisely for the reason that the appearance of a stray animal on an Indian road is not a rarity. It also cannot be lost sight of that in the present cases the accident took place at 12.00 AM. By the time the people gathered and tried to retrieve the bodies etc. and the police arrived it was 5.30 AM in the morning and the DDR was promptly recorded. The DDR is not an encyclopedia of facts and in the present case was intended just to inform the police about the death of four people in this horrible accident. The mere fact that in that document the informant had said that it was a chance accident and had further explained it in his testimony cannot be said to be a case where a witness has resiled.

In the entire conspectus of facts as extracted above, I am not persuaded to hold that the finding of fact recorded by the Tribunal is vitiated.

Appeals are dismissed.

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

(AJAY TEWARI)
JUDGE

July 05, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No