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

FAO no. 8227 of 2018 (O&M)
Decided on: 17.12.2018.

Shri Ram General Insurance Company LimitedAppellant

versus

Bhupinder Kaur and othersRespondents

FAO no. 8223 of 2018 (O&M)

Shri Ram General Insurance Company LimitedAppellant

versus

Anoop Singh and othersRespondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Rajbir Singh, Advocate,
for the appellant-Insurance Company.

DR.RAVI RANJAN, J. (Oral)

These appeals are directed against the judgment and Award dated 30.08.2018 passed by the Motor Accident Claims Tribunal, Ludhiana in MACT case No.104 of 2016 and MACT case no.30 of 2916 both decided on 30.08.2018 by which the compensation has been granted to the claimants who are mother and son of the deceased-Simranjit Singh who has died in a motor vehicular accident (in FAO no.8227 of 2018) and Anoop Singh (in FAO no.8223 of 2018) who received injuries.

1. The case of the claimants is that the offending truck bearing registration no. HR-58-C-0280 was moving in the middle of the road at a high speed and the driver of the truck suddenly applied brakes so strongly in the middle of the road that it hardly left any chance to the vehicles coming behind him to stop in time to avoid collision. As a result TATA magic cab being driven by deceased Simranjit Singh collided behind the truck, which was moving ahead of it and claimant/Anoop Singh received multiple and grievous injuries and Simranjit Singh died of the fatal injuries.

2. It has been held by the Tribunal that there is no evidence of contributory negligence in this case as the entire evidence makes out a case of negligence on the part of the respondent no.1(before the Tribunal), i.e. the driver of the offending truck. The Tribunal has taken notice that respondent no.1, who was the driver of the offending truck, was the sole and best person to explain for what reason he had applied brakes in the middle of the road suddenly or whether it was suddenly and strongly applied or not. The justification should have come from him but he failed to step into the witness box to do so, therefore, in view of the specific claim of the claimants in both the claim petitions that he strongly applied brakes in the middle of the road while moving in a high speed, the same has resulted in collision from behind, adverse inference has to be drawn against the driver of the vehicle and as such the Tribunal has held that the negligence in driving the offending vehicle stands proved.

3. Learned counsel for the appellant-Insurance Company has

submitted before this Court that in fact the vehicle being driven by the deceased was not keeping safe distance and that has resulted in collision when the brakes were applied and, thus, it has to be presumed that the negligence was on the part of the deceased-Simranjit Singh himself who was driving the TATA magic cab vehicle.

In support of his submission learned counsel has placed reliance upon a decision of the Hon'ble Supreme Court of India rendered in **“Nishan Singh and others vs. Oriental Insurance Company Limited and others”** 2018(2) RCR (Civil) 891, in which the Apex Court has held that sufficient distance though has not been defined in the regulation or elsewhere, the thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver sufficient time to respond. The distance of 10-15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. However, in that case the Tribunal had noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brakes in the middle of the road. Further, the finding of the issue no.1 recorded by the Tribunal in the aforesaid case was that there was no evidence regarding the exact place of occurrence and having taken survey. Therefore, the issue under consideration was answered against the appellants (claimants) that the said subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the center of the road at right side or applied sudden brake as being the cause

of the accident. Being concurrent finding of the fact and a possible view, the Apex Court came to the conclusion that it does not need interference.

However, in the present case, the case of the claimants supported by the eyewitness, CW2 Darshan Singh is that driver of the truck was in the middle of the road when he applied the brakes suddenly and strongly leaving no scope for the vehicle behind it to respond. In my opinion once such an evidence is there it was the bounden duty of the driver of the vehicle to respond by negating the aforesaid facts saying whether he was in the middle of the road or not when he applied brakes suddenly and strongly, whether he was on the left lane or the right lane or whether actually he did apply the brakes so strongly or not and what were the conditions which compelled him to apply the brakes so suddenly because, on highways, mostly there is a divider between vehicles coming from one side and going to other side. However, the Tribunal has noted that he did not had courage to appear as a witness in the witness box and, thus, he has failed to come forth with any explanation which caused for drawing adverse inference against him. In my considered opinion, the given circumstance is distinguishable from those which were there in the aforesaid judgment of the Hon'ble Apex Court. In that case, there was a concurrent finding of facts recorded by the Courts below, i.e. the Tribunal as well as the concerned High Court that vehicle was not driven rashly and negligently by the driver. In the present case no such finding could be recorded by the Tribunal and I also do not find any reason to record such finding.

4. By way of last resort, learned counsel for the appellant has submitted that it does not appear that CW2 Darshan Singh, who is father of the deceased, was present at the place of occurrence and is an eyewitness for the reason that had it been the case, he would have brought his son to the hospital which was not done by him rather one Rajiv who is a Reporter of Dainik Jagran had brought him to the hospital. However, the affidavit filed by CW2 Darshan Singh and the cross-examination done by the Insurance Company has been produced by learned counsel for the appellant at the time of hearing. In the cross-examination he had gone to say to the extent that he caught hold of the driver of the offending truck. He has also stated that the tempo was keeping distance of 12 feet and the speed of the vehicle was 30-40 KM per hour. In my opinion on this count also the facts are distinguishable with those which were available before the Apex Court in **Nishant Singh** (supra) as the present vehicle was not at such an high speed that the distance of 10-15 feet would not have been sufficient because it was only running at 30-40 KM per hour speed which can be said to be a moderate speed.

5. That apart, the driver or rather nobody has not come up in the witness box to say that the vehicle driven by the deceased-Simranjit Singh was not keeping a safe distance. Merely raising this aspect would not be sufficient without proving the same by leading evidence. In such a situation this Court is not in a position to interfere with the findings recorded by the Tribunal. As a result both the appeals are dismissed.

It is made clear that no other ground was raised by learned counsel for the appellant at the time of hearing than those which have already been discussed as above.

A photocopy of this judgment be placed on the file of the connected case file.

December 17, 2018
dharamvir

(DR. RAVI RANJAN)
JUDGE

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