

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 04, 2018

+ **MAC.APP. 202/2018 & C.M. 7057/2018**

IFFCO TOKIO GENERAL INSURANCE CO. LTD. .. Appellant
Through: Mr. A.K.Soni, Advocate

Versus

TARSEM KAUR & ORS. (ROYAL SUNDARAM ALLIANCE
INSURANCE CO. LTD.) Respondents
Through: Mr. Pankaj Gupta, Advocate for
respondent No.6

+ **MAC.APP. 287/2018**

ROYAL SUNDARAM GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Mr. Pankaj Gupta, Advocate

Versus

TARSEM KAUR AND ORS. (IFFCO TOKIO GENERAL
INSURANCE CO. LTD.) Respondents
Through: Mr. A.K.Soni, Advocate for
respondent No.3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals arise out of common impugned Award of 9th January, 2018 pertaining to an accident which occurred on

13th April, 2009 at about 06:00 AM in Palwal, Haryana. The accident in question had occurred due to collusion of a car and a truck.

2. The above captioned first appeal is preferred by *IFFCO Tokio General Insurance Company Limited*, who is the Insurer of the car (*henceforth referred to as the “Insurer of the car”*), whereas the second captioned appeal is preferred by *Royal Sundaram General Insurance Company Limited*, who is the Insurer of the truck (*henceforth referred to as the “Insurer of truck”*) involved in the accident. Learned Motor Accident Claims Tribunal (*hereinafter referred to as the ‘Tribunal’*) has fastened the liability of 25% upon Insurer of the car and 75% upon Insurer of the truck involved in the accident, to pay the awarded compensation.

3. Since these two appeals arise out of common Award of 9th January, 2018, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

“Facts in brief as emerged from the claim petition are that on April 13,2009, deceased (Gurmeet Singh) was going in a car bearing registration no. DL-4CAD-4959 alongwith Deepanker Malik, Dishant and Bhuwan and the car was being driven by Deepanker Malik. It was alleged that at about 6.00 a.m when their car reached village Sarai, G.T.Road within the jurisdiction of PS Palwal, their car rammed into Truck Trolla bearing registration no. HR-47D-6492 as the said Trolla was parked in the middle of road without any signal and indication. It was alleged that accident had taken place due to composite negligence of driver of the truck trolla

as he parked his Trolly in the middle of road without any signal or indication as well as negligence of the car driver as he failed to notice the said Trolly. It was alleged that due to collision, all occupants except Bhuwan sustained fatal injuries whereas Bhuwan sustained serious injuries. In this regard an FIR under Section 283/337/304-A IPC was got registered at PS Palwal, Faridabad, Haryana.”

4. The Tribunal in the impugned Award proceeds on the undisputed fact that the car in question had hit the stationary truck, which was parked in the middle of the road near the Toll barrier, at Palwal, Haryana, at about 06:00 AM on 13th April, 2009, without any signal or indicator. The Tribunal has relied upon evidence of *Mr. Neeraj Garg (PW-3)*, who was following the car in question in his own car and while dealing with the evidence of aforesaid witness, the Tribunal has concluded that the liability of the Insurer of the car in question is 25% and of the Insurer of the truck in question is 75%, to pay the awarded compensation.

5. The challenge to the impugned Award by learned counsel for Insurer of the car in question is on the ground that there was no negligence on the part of the car driver and to submit so, attention of this Court is drawn to evidence of *Neeraj Garg (PW-3)*. It is pointed out that Insurer of the truck in question had not led any evidence to the contrary and so, the liability to pay the awarded compensation is of the Insurer of the truck in question.

6. On the contrary, the stand taken by counsel for Insurer of the truck is that no negligence is attributable to the truck driver and in any case, liability to pay the awarded compensation cannot be more than 50%, as

the car driver was required to maintain safe distance from the vehicle ahead and so, the liability to pay the awarded compensation should be equally apportioned between the Insurers of the car and truck in question.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that *Neeraj Garg (PW-3)* is infact an eye witness of this accident, as he was behind the car which colluded with the truck, which was stationary in the middle of the road, without any signal or indicator. Although *Neeraj Garg (PW-3)* in his evidence has stated that the sole negligence was of the truck driver, but I find that due to this accident, the car which was driven by deceased, was badly damaged. So, it cannot be said that the negligence was solely of the truck driver. Supreme Court in *Raj Rani & Ors. Vs. Oriental Insurance Company Limited & Ors.* (2009) 13 SCC 654, where the truck was stationary, held that liability of the parties to pay the awarded compensation has to be assessed in the ratio of 50:50. In light of the evidence on record, site plan of place of accident on record, this Court finds that the Tribunal has erred in putting the liability of paying 75% compensation on the Insurer of truck in question. In the considered opinion of this Court, negligence of drivers of the car and truck involved in this accident is 50:50.

8. Consequentially, the impugned Award is modified to the extent that liability to pay the awarded compensation shall be in the ratio of 50:50. That is to say, 50% of the awarded compensation shall be paid by the Insurer of the car in question and remaining 50% by Insurer of the Truck in question. *IFFCO Tokio General Insurance Company Limited* is directed to deposit the enhanced share of compensation with the Tribunal

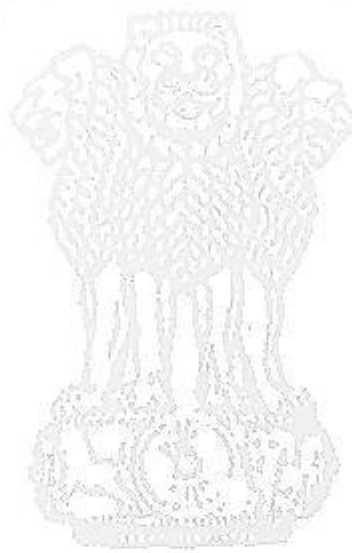
within four weeks and thereafter, the compensation be released to the Claimants in the ratio and manner, as indicated in the impugned Award, if not already done.

9. With aforesaid modification in the impugned Award, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 04, 2018

r



नित्यमेव जयते