

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

Date of decision: 26.02.2019

FAO No.1312 of 2019 (O&M)

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. ... Appellant

Versus

MOHIT WALIA AND OTHERS

... Respondents

FAO No.1407 of 2019 (O&M)

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. ... Appellant

Versus

SMT. RAMA WALIA AND OTHERS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vishal Aggarwal, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1312 and 1407 of 2019 as these have emerged out of the same award dated 07.09.2018 passed by the Motor Accidents Claims Tribunal, Amabala whereby compensation has been assessed on account of death of Vijesh Walia @ Vicky and injuries sustained by Mohit Walia in an occurrence that took place on 09.11.2015. For facility of reference, facts are taken from FAO No.1312 of 2019.

The sole submission made by counsel for the appellant is that the present is a case of contributory negligence of the alleged offending vehicle and motorcycle bearing No.HR-54-C-4094 driven by Mohit Walia on which Vijesh Walia @ Vicky was a pillion rider. To bring home his contention, he has made three fold submissions. It is argued that Mohit Walia in his cross examination has admitted that he did not possess driving

licence to drive the motorcycle. Neither Mohit Walia nor Vijesh Walia was bearing helmet in compliance with Section 129 of Motor Vehicles Act, 1988. The third submission made by counsel is that Mohit Walia admitted in his cross examination that he was driving the motorcycle on wrong side of the road, therefore, he cannot escape his liability for the occurrence.

Indisputably, Mohit Walia, the injured victim and driver of motorcycle aforesaid appeared in the witness box to support cause of the claimant(s) that accident is the result of rash and negligent driving of maruti car No.UP-93G-2910 driven by Kulwinder Singh @ Sonu at the time of unfortunate occurrence. He tendered into evidence his duly sworn affidavit by way of examination in chief. He would depose that accident took place when the two vehicles aforesaid were coming from opposite direction but the offending vehicle came on wrong side and caused the accident. Counsel for the appellant has read cross examination of Mohit Walia in extenso but failed to point out any such materials that either Mohit Walia has admitted that he was driving on wrong side of the road or it can be inferred that Mohit Walia can also be attributed negligence.

Kulwinder Singh, driver of the offending vehicle did not examine himself without any tangible explanation, thus, an adverse inference is liable to be drawn against the respondents that Kulwinder Singh has nothing to say to counter testimony of Mohit Walia much less to substantiate contention of the insurance company that accident is the result of contributory negligence of drivers of both the vehicles.

The mere fact that Mohit Walia was not possessing a driving licence ipso facto is not a ground to attribute rashness and negligence to him more particularly in view of the facts elicited in examination in chief and cross examination of Mohit Walia in his testimony before the Tribunal. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Sudhir Kumar Rana Vs. Surinder Singh and ors., 2008(3) RCR (Civil) 265.**

The contention that Mohit Walia and pillion rider can be

attributed contributory negligence for not wearing helmet is of no avail in the given circumstances that the offending vehicle went on the wrong side of the road and hit the two wheeler. This apart, Mohit Walia sustained injury on his right leg, therefore, wearing or non wearing of helmet is of no consequence. Counsel has failed to point out if Vijesh Walia @ Vicky sustained any head injury. In this view of the matter, I do not find an error much less perversity in findings of the Tribunal determining issue No.1 in favour of the claimants and against the respondents therein. Accordingly, findings of the Tribunal on issue No.1 are affirmed.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. The statutory amount deposited by the insurance company be remitted to the Tribunal for payment to the claimant(s). As the appeals have been decided on merits, applications for condonation of delay are of academic relevance.

26.02.2019

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No