

**254+260 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-2251-2019 (O&M)

Date of Decision: 13.12.2019

Bharti AXA General Insurance

.....Appellant

Versus

Rubina Khatoon and others

.....Respondents

FAO-2253-2015 (O&M)

Bharti AXA General Insurance

.....Appellant

Versus

Sunita Kumari and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Rajneesh Malhotra, Advocate,
for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate for
the appellants in FAO-2902 & 2904-2019 and
for respondents No.1 to 4 in FAO-2251-2019 and
for respondent No.1 in FAO-2253-2019.

Mr. Neeraj Khanna, Advocate, for
respondents No.5 and 6 in FAO-2251-2019 and
for respondents No.2 and 3 in FAO-2253-2019.

NIRMALJIT KAUR, J. (ORAL)

All the appeals shall stand decided by this common order and
judgment as the same arise out of a common award.

The present appeals have been filed against the award dated
26.11.2018 passed by the learned Motor Accident Claims Tribunal,
Chandigarh.

While praying for setting aside the said award, learned counsel
for the appellant-Insurance Company argued that:-

(1) The FIR was got registered against an unknown truck by

PW-2, Karamsher. There is no mention in the FIR qua the negligence of the driver of the car but before the Tribunal, the story was entirely changed and the negligence was alleged against the driver of the car.

(2) PW-2, Karamsher was not an eye witness. It is admitted by him that he came on the spot subsequently, therefore, his statement as an eye witness cannot be relied upon. It is not clear, as to how he came to know the details of the said accident.

(3) The claimants also did not come forward to prove the negligence. No FIR was registered at their behest nor any FIR or complaint was filed at their behest. In these circumstances, it is not a case of negligence. Hence, the claim should have been filed under Section 163-A of the Motor Vehicle Act, 1988 (for short, 'the Act') and in the absence of the negligence, the claim petition filed under Section 166 was not maintainable.

(4) Since there is no proof of negligence, the question of composite negligence too does not arise.

(5) It is further stated by learned counsel for the appellant-Insurance Company that in the absence of any evidence and the FIR having been registered against the unknown truck, the only conclusion is that the case was put up by the claimants with the collusion of RW-1, Wakil Rajaq @ Wakil Rajak, the driver of the car.

Learned counsel for the parties were heard at length and record too was perused as well as the statements of the witnesses was read out.

Argument of learned counsel for the appellant-Insurance company that the FIR was got registered against the truck driver and not a word was said about the negligence of the driver of the car, is sufficient to

set aside the award, has no merit. In order to adjudicate the same, it is

necessary to reproduce the relevant part of cross-examination of PW-2, Karamsher, which is as under:-

“It is correct that FIR was lodged against unknown truck driver volunteer the driver of the car was known to us therefore we did not lodge the FIR against respondent No.1.”

A perusal of the above shows that on a specific question during cross-examination, PW-2 admitted that no allegation was alleged against the driver of the car because the said driver was known to him and therefore, he did not want any criminal case registered against the driver. Hence, the FIR was registered only against the said truck driver. This admission clarifies why no allegation was made against the driver of the car but that does not mean that the evidence qua the negligence of the driver which emerged before the Tribunal can be ignored.

The second argument that Karamsher-PW2 was not an eye witness and therefore, his statement cannot be believed too has no merit. Karamsher-PW2 never alleged that he was the eye witness. It is stated by him that the details of the accident were provided to him by the driver of the car. Moreover, even if the statement of Karamsher-PW2 is ignored, the statement of the driver of the car in itself is sufficient to prove the negligence. Examination-in-chief of the driver of the car, namely, Wakil Rajaq @ Wakil Rajak RW-1 is sufficient. The relevant part of his examination-in-chief is reproduced as under:-

“When they were on Yamuna Express Highway near Milestone No.092, at about 5:00 am on 3.7.2017 when the car very carefully but it met with an accident when the deponent was in process of overtaking a Truck which was going ahead of the Car, the driver of the unknowns truck took his Truck towards the right side. In order to avoid the collision with the

truck, the deponent though was able to avoid the collision with the Truck but in this process their car struck against the railing on the right side of the road.”

A perusal of the statement by way of affidavit of Wakil Rajaq @ Wakil Rajak RW-1 shows that it was Wakil Rajaq @ Wakil Rajak, the driver of the car, who was trying to overtake the truck and in the process hit against the railing on the right side. The very fact that he hit the railing from the right side further corroborates the statement of the driver himself that it was indeed the car that was trying to overtake the truck.

In view of the above, there is no doubt left that it was the negligence of the driver of the car that resulted in the accident, who also seems to have been driving at a fast speed and that too in the middle of the night. He started from Chandigarh at 10:00 pm and was already at the Yamuna Express Highway by 5:00 am even after stopping on the way at Murthal. This could only be on account of over speeding.

In view of the above, the present appeals filed by the Insurance Company are dismissed being devoid of merit.

Learned counsel the appellant-Insurance Company at this stage, submitted that they have also challenged the award on the question of quantum of compensation. However, nothing has been brought to the notice of this Court, which may enable this Court to interfere in the amount of compensation awarded by the Tribunal.

Dismissed accordingly.

At this stage, learned counsel for the claimant-respondents has pointed out that he has also filed FAO Nos.2902 and 2904 of 2019 against the award praying for enhancement of compensation. On request of learned

counsel for the claimants, the appeals are taken on board for hearing today itself.

Heard learned counsel for the parties at length. However, learned counsel for the claimant-respondents has not been able to show as to how the amount of compensation is inadequate and is not as per the law laid down by Hon'ble the Apex Court in the case of National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680. Hence, the award does not require any modification.

FAO Nos.2902 and 2904 of 2019 are accordingly dismissed being devoid of merit.

(NIRMALJIT KAUR)
JUDGE

13.12.2019

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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No