

FAO-2912 of 2013 (O&M)

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

FAO-2912 of 2013 (O&M)
Date of decision: 22.11.2019

ICICI Lombard General Insurance Company Ltd.

.....Appellant

versus

Sushila and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Jaspreet Kaur, Advocate,
for Mr. R.S. Dhull, Advocate, for the appellant.
Ms. Bimmy Joshi, Advocate,
for Ms. Ekta Thakur, Advocate, for respondents No.1 and 2.
Mr. Parminder Singh-I, Advocate, for respondents No.3 and 4.
Mr. Ravinder Arora, Advocate,
for Mr. V.K. Garg, Advocate, for respondent No.5.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, the Insurance Company has laid challenge to award dated 15.04.2013 of the Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal') to fix contributory negligence of respondents No.3 to 5.

Briefly, in the intervening night of 13/14.08.2009, deceased Vikas @ Kallu was on the wheels of truck bearing registration No.HR-68-1465. When he reached a little ahead of Shahpur in the area of Ambala Cantt. (Hry.), tyre of his truck got punctured. Thus, he parked his truck on the extreme left side of the road. While, he was in the process of changing the tyre, offending truck bearing registration No.HR-63-6039 driven by respondent No.3, owned by respondent No.4 and insured with respondent

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No.5 came and struck against the parked truck. Resultantly, deceased Vikas @ Kallu was sandwiched between both the trucks by respondent No.3. As a result thereof, he suffered multiple grievous injuries and succumbed to the same at the spot.

Being aggrieved, his mother and brother filed claim petition under Section 163-A of the Motor Vehicles Act, 1988 before the Tribunal, who after holding trial, awarded a compensation of Rs.3,88,500/- along with interest @ 7.5% per annum from the date of filing claim petition till realization, holding sole liability of appellant-Insurance Company to make payment of aforesaid compensation being insurer of the truck driven by deceased.

Learned counsel for the appellant *inter alia* contends that the Tribunal failed to appreciate that offending truck bearing registration No.HR-63-6039 coming in a rash and negligent manner had struck against stationary truck of the deceased, while deceased was changing tyre by parking his truck on the extreme left side of the road. Therefore, liability to pay compensation had to be joint and several of respondents No.3 to 5.

On the other hand, learned counsel for respondent No.5-Insurance Company, refuting above submissions, pleaded legality and validity of the impugned award, urging that deceased was changing the tyre by parking his truck in the middle of the road without any parking lights on. Therefore, liability of Insurance Company, which had insured the truck driven by deceased has rightly been fixed.

Having given thoughtful consideration to the rival submissions, this Court finds force in the contentions raised by learned counsel for the

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appellant-Insurance Company inasmuch as, in case, respondent No.3 would not have been rash and negligent in driving his truck, he must have noticed stationary truck of the deceased through head lights of his truck.

In view of above factual aspect of the case, appellant-Insurance Company and respondents No.3 to 5 are held equally liable in the ratio of 50:50 to pay compensation. Since, respondent No.4 owner of the truck has been indemnified by respondent No.5, therefore, it shall pay half of the awarded amount aforesaid along with interest awarded by the Tribunal to respondents No.1 and 2-claimants. In case, same has already been paid by appellant-Insurance Company, in that eventuality, respondent No.4 would reimburse half of the amount along with the proportionate interest to the appellant-Insurance Company.

Registry is directed to remit Rs.25,000/- deposited by the appellant-Insurance Company to the Tribunal, to be disbursed to the rightful holder.

Disposed of accordingly.

(Ramendra Jain)
Judge

November 22, 2019

R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No