

FAO No.440 of 2014 (O&M)

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

FAO No.440 of 2014 (O&M)

Date of decision: 29.08.2019

IFFCO TOKIO General Insurance Company Ltd.

.....Appellant

versus

Smt. Shakuntla and others

.....Respondents

FAO No.441 of 2014 (O&M)

IFFCO TOKIO General Insurance Company Ltd.

.....Appellant

versus

Smt. Sarjoni Rawat and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Vandana Malhotra, Advocate, for the appellant.
Mr. Rohit Rana, Advocate,
for Mr. Kunal Dawar, Advocate, for respondents No.1 to 4
(in FAO No.441 of 2014).
Mr. Rajiv Dhawan, Advocate, for respondent No.3 and 4
(in FAO No.440 of 2014) and
for respondents No.5 and 6 (in FAO No.441 of 2014).

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above-titled two appeals filed by the Insurance Company against award dated 23.08.2013 passed by Motor Accident Claims Tribunal, Faridabad (in short the 'Tribunal'), are being disposed of, awarding compensation to tune of Rs.8,57,000/- to respondents No.1 and 2 in FAO No.440 of 2014 and to the tune of Rs.14,78,500/- to respondents No.1 to 4 in FAO No.441 of 2014, while accepting their claim

petitions under Section 166 of the Motor Vehicles Act.

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Briefly, on 03.04.2011 deceased Amit Panchal and Balvinder accompanied by Sanjeev, Arun, Dharmender Bhardwaj, while travelling in car bearing registration No.UGC 3593, when reached 1 km ahead of toll plaza-II, Mathura Road towards Hodal side, Palwal, in the area of Police Station Sadar Palwal, offending truck bearing registration No.HR-38-P-6759 driven by Jagram (respondent No.3 in FAO No.440 of 2014 and respondent No.4 in FAO No.441 of 2014) in a rash and negligent manner, going ahead of them, applied sudden brakes without any indication or signal. As a result thereof, aforesaid car being driven by Amit Panchal struck against aforesaid truck from behind. All the occupants received multiple grievous and serious injuries on their person. Amit Panchal and Balvinder succumbed to the same.

Being aggrieved on account of their death, legal heirs of deceased Amit Panchal and Balvinder filed their respective claim petitions No.103 and 104 in the year 2011 before the Tribunal at Faridabad. After due contest from the appellant-Insurance Company, both the petitions were accepted vide impugned award dated 23.08.2013, granting compensation to the respondents-claimant as narrated above.

Learned counsel for the appellant-Insurance Company, drawing attention of this Court towards FIR (Ex.P3) lodged by occupant of the car, namely, Sanjeev son of Gauri Dutt and his statement as PW3 *inter alia* contends that accident had occurred not on account of negligence of the truck driver, rather Balvinder and Amit Panchal had died on account of their own negligence for driving their car in a rash and negligent manner as they tried to overtake alleged offending truck from wrong side. They were even

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support of her contentions, learned counsel placed reliance on the judgment in ***Nishan Singh and others v. Oriental Insurance Company Ltd. through Reginal Manager and others***, 2018(2) R.C.R.(Civil) 891 (S.C.).

On the other hand, learned counsel for the respondents-claimant refuting above submissions, pleading legality and validity of the impugned award, contends that claimants have been granted inadequate compensation by the Tribunal. Therefore, they have filed FAO No.865 of 2014.

Having given thoughtful consideration to the rival submissions, this Court finds both the appeals completely devoid of any merit for the reasons to follow.

It is well-settled proposition of law that FIR is not an encyclopaedia of an incident. Registration of FIR only sets criminal law into motion. Sanjeev son of Gauri Dutt, who is author of FIR Ex.P3, as PW3 in his examination in chief by way of his affidavit Ex.PW3/A categorically testified that the accident had occurred on account of rash and negligent driving of the offending truck bearing registration No.HR-38-P-6759 inasmuch as its driver applied sudden brakes without giving any indication or signal Amit Panchal driving car bearing registration No.UGC 3593 tried his level best to avert the accident. It had taken place on account of sole negligence of the truck driver. He also categorically testified that Amit Panchal was driving his car in a very moderate speed on correct side of the road. No contrary evidence has been led by the appellant-Insurance Company to his statement, which has to be read as a whole and not in isolation. From the wholesome reading of his statement, only irresistible

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account of the rash and negligent driving of respondent No.3 – Jagram.

As far as submission of learned counsel for the appellant qua non-maintaining considerable and sufficient distance by Amit Panchal from the offending truck going ahead of him is concerned, this Court is in complete disagreement with her inasmuch as even a trained driver having long experience, driving a vehicle in a moderate speed on correct side of the road, observing all traffic rules and maintaining a considerable and sufficient distance from the vehicle going ahead of him, if stopped all of a sudden cannot avert the accident. In the instant case, accident had taken place on the expressway called 'Delhi-Mathura Expressway', where vehicles are permitted to run at a speed of 100 km per hour or more. Therefore, it is not possible to avert accident in such a high speed. In the instant case also, considering the above aspect, Amit Panchal could not have averted the accident on applying sudden brakes by truck driver going ahead of him.

This Court has no dispute with the judgment in *Nishan Singh (supra)* relied upon by learned counsel for the appellant, but with due respect it is observed that every case has its own peculiar facts. The facts and circumstances of the instant case are distinguishable from the facts of authority relied upon by learned counsel for the appellant. Therefore, no benefit of the same can be given to the appellant-Insurance Company.

Dismissed.

(Ramendra Jain)
Judge

August 29, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No