

FAO-807-2016(O&M) &
FAO-5123-2016(O&M) with
CROSS OBJECTIONS-162-CII-2018

-1-

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

(1) FAO-807-2016(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Smt.Nasreen and others

...Respondents

(2) FAO-5123-2016(O&M) with
CROSS OBJECTIONS-162-CII-2018

National Insurance Co. Ltd.

...Appellant

Versus

Sanju Kamboj and others

...Respondents

Date of Decision:-21.2.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Raj Kumar Bashamboo, Advocate
for the appellant – Insurance Company in FAO-807-2016.

Mr.Suvir Dewan, Advocate
for the appellant in FAO-5123-2016 and
for respondent No.5 in FAO-807-2016.

Mr.Mahesh Gupta, Advocate
for respondent No.6 in FAO-807-2016 and
for respondents No.1 and 2 in FAO-5123-2016.

Ms.Amandeep Kaur, Advocate for
Mr.Ashwani Arora, Advocate
for respondent Nos.1 and 2 in FAO-807-2016.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-807-2016 filed on behalf of appellant – Oriental Insurance Company Ltd. and FAO-5123-2016 filed on behalf of appellant – National Insurance Company Ltd. and cross objections No.162-CII of 2018 filed on behalf of claimants in FAO-5123-2016 , which have arisen out of the same accident.

Briefly stated, the facts of the case are that on 14.6.2014, deceased Sh.Gagan Kamboj was driving motorcycle bearing registration No.CH-01-AX-9246 going from Chandigarh to Shimla; that Aysha Khan @ Aisha Khan was pillion riding on that motorcycle; that at about 1:05 p.m. when the motorcycle reached on Tikkeri turn, Kandaghat, a truck having registration No.HP12-A-8591 driven by respondent No.1 – Karamjit allegedly in a rash and negligent manner by going on wrong side hit the motorcycle with the result both the riders as well as the motorcycle fell on the road; that the riders suffered serious injuries; they were taken to hospital, however, both the injured succumbed to the injuries suffered by them in the mishap.

Ms.Nasreen – mother and Sh.Mustkim – father of deceased Aysha Khan @ Aisha Khan had brought a claim petition bearing No.MACT-268 dated 22.8.2014 under Section 166 of the Motor Vehicles Act against respondents i.e. respondent No.1 - Karamjit – driver, respondent No.2 – Sukhdev Singh – owner, respondent No.3 - National Insurance Company Ltd., Chandigarh – insurer of truck No.HP12-A-8591

as well as respondent No.4 – Sarvesh Kamboj legal heir of Sh.Gagan Kamboj – deceased, who was driver and owner of motorcycle No.CH-01-AX-9246 and its insurer company – respondent No.5 – Oriental Insurance Company Ltd.

Legal representatives of Sh.Gagan Kamboj namely mother – Sanju Kamboj and father – Sarvesh Kamboj had also brought a claim petition bearing No.MACT-214 dated 16.7.2014 against respondents i.e. respondent No.1 – Karamjit Singh – driver, respondent No.2 Sukhdev Singh – owner and respondent No.3 - National Insurance Company – insurer of the truck No.HP12-A-8591.

Both the claim petition were adjudicated by different Motor Accident Claims Tribunal at Chandigarh. The claim petition bearing No.MACT-268 dated 22.8.2014 was decided on 16.9.2015 by Motor Accidents Claims Tribunal, Chandigarh, Presided over by Sh.Atul Kasana, which came to the conclusion that the accident took place due to rash and negligent act of driver of motorcycle No.CH-01-AX-9246 as well as rash and negligent driving by the driver of truck No.HP12-A-8591, resulting into death of Aysha Khan @ Aisha Khan and it was a case of composite negligence of driver of ill-fated motorcycle and offending truck, in that way each wrongdoer was jointly and severally liable for payment of compensation. The Motor Accidents Claims Tribunal, Chandigarh held the motorcycle driver and truck driver to be negligent to the extent of 50% each, as such while awarding compensation of Rs.12,09,000/- apportioned the liability accordingly.

Whereas MACT Petition No.214 dated 16.7.2014 was decided by a different Motor accidents Claims Tribunal, Chandigarh, Presided over by Sh.Ranjit Kumar Jain vide award dated 20.11.2015 in which a finding was returned that deceased Sh.Gagan Kamboj had died on account of injuries suffered in the motor vehicular accident caused due to rash and negligent driving of truck No.HP12-A-8591 by respondent No.1 – Karamjit Singh. Therefore, compensation of Rs.17,09,000/- with interest and cost was awarded to the claimants payable by National Insurance Company Ltd., Parwano, Himachal Pradesh – insurer of truck No.HP12-A-8591.

Aggrieved by the award dated 16.9.2015 passed in MACT No.268 dated 22.8.2014 titled 'Smt.Nasreen and another Versus Sh.Karamjit and others', Oriental Insurance Company Ltd. - insurer of motorcycle No.CH-01-AX-9246 arrayed as respondent No.5 in the claim petition has filed an appeal before this Court i.e. FAO-807-2016. Whereas National Insurance Co. Ltd. is dissatisfied with the award dated 20.11.2015 passed by the Tribunal in MACT Petition No.214 of 16.7.2014 titled 'Sanju Kamboj and another Versus Karamjit Singh and others' and has filed FAO-5123-2016. The claimants/respondents have also filed cross-objections craving for enhancement of the compensation awarded to them by the Tribunal.

Notices have been issued and the parties have appeared through counsel.

I have heard learned counsel for the parties besides going

through the record.

In this case due to two different Tribunals trying the claim petitions relating to one accident, a very anomalous situation has arisen. In MACT-268 of 22.8.2014, the Tribunal has come to the conclusion that the accident had taken place on account of negligence of the driver of the motorcycle i.e. Gagan Kamboj deceased as well as rash and negligent driving of offending truck by Karamjit – respondent No.1 finding them responsible to the extent of 50% each coming to the conclusion that it was a case of composite/contributory negligence, in that way apportioning the liability between owner, driver and insurance company of the truck as well as legal heir of Gagan Kamboj – deceased, driver & owner and insurance company of the ill-fated motorcycle.

Whereas the other Tribunal trying MACT Petition No.214 dated 16.7.2014 has returned a clear finding that accident had taken place on account of rash and negligent driving of the offending truck by Karamjit Singh – respondent No.1.

It is very surprising that how the two Tribunals on the basis of same facts and circumstances and almost similar evidence have arrived at two different conclusions. Therefore, to find solution to this ambiguity, the two awards are required to be set aside and remanded to one Tribunal for the purpose of giving finding whether it was a case of composite/contributory negligence or the accident having taken place on account of rash and negligent driving of offending truck by respondent No.1 – Karamjit Singh only.

Therefore, the awards under appeals are set aside and the cases are remanded to learned District Judge – cum - Motor Accidents Claims Tribunal, Chandigarh to pass fresh award after hearing learned counsel for the parties giving issue-wise findings vide a consolidated Award/judgment. The parties through counsel are directed to appear before learned District Judge – cum - Motor Accidents Claims Tribunal, Chandigarh on 15.3.2019.

Both the FAOs as well as cross-objections are disposed of accordingly.

Registry is directed to send the lower Courts record to learned District Judge – cum - Motor Accidents Claims Tribunal, Chandigarh at once.

Learned District Judge – cum - Motor Accidents Claims Tribunal, Chandigarh shall fix a date for arguments and thereafter pass an award expeditiously preferrably within a period of two months from the date of receipt of copy of this order.

21.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No