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

**FAO No.7043 of 2018(O&M)**
**Date of Decision:09.01.2019**

**National Insurance Co.Ltd.**

.................APPELLANT

Vs.

**Atul Kumar @ Monu Kumar @ Lala and others**

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Sandeep Suri, Advocate for the appellant.

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DR. RAVI RANJAN, J.(Oral)

Heard learned counsel for the parties and perused the records of this case.

This appeal by Insurance Company is directed against the Judgment and Award dated 12.07.2018 passed in Claim Petition No.RBT 27 MACT of 2017 by the Motor Accident Claims Tribunal, Fatehabad (for the sake of brevity 'the Tribunal').

Short facts of this case necessary to be considered for deciding the *lis,* stand enumerated as under:-

On 07.03.2017 at about 5.00 P.M., the claimant-injured, namely, Atul Kumar @ Monu Kumar @ Lala (petitioner in the claim petition filed before the Tribunal) being the helper/cleaner alongwith one Khema Ram @ Gagandeep, who was another helper/cleaner and one Pawan son of Puran Chand being driver were coming back from Delhi to Abohar in the Canter Eicher bearing Registration No.PB-22-J/8768 after loading vegetables. The driver was driving the canter at a moderate speed with due care and caution by following the traffic rules. The petitioner-claimant and Khema Ram were travelling in the canter by occupying the seat in the cabin. At about 10.45/11.00 p.m., when the said Canter Eicher bearing No.PB-22-J-8768 reacher near the power house on the entrance of the City, Fatehabad at Hisar-Fatehabad road, a truck-tralla bearing Registration No.RJ-31GA-1883 came being driven at high speed, rashly and negligently without adhering to the traffic rules and going ahead of the canter, the driver of the truck-tralla suddenly applied brakes without any indication to stop the vehicle or without any cogent reason. Due to this, the left side of the canter struck in the rear portionof the abovesaid truck-tralla. The petitioner-claimant, who was occupying the window seat got injured and his legs came in between the canter and truck-tralla. He received multiple grievous injuries on his legs. He was taken out from the vehicle by driver Pawan and rushed to General Hospital, Fatehabad. Due to his critical condition, he was referred to higher centre and shifted to Dr. Pankush Arora's Life Care Hospital, Bighar Chowk, Fatehabad. He was operated and treated there and his right leg was amputated below knee and was also operated for fracture of left leg. The claimant-injured claimed for medical expenses of Rs.2 lacs, which were spent on treatment, hospitalization, investigations, medicines, transportation, special diet etc.

Upon statement of Khema Ram @ Gagandeep, who was also travelling with the injured-claimant being a second cleaner, an FIR was registered in which police report has already been submitted under Section 173 of the Code of Criminal Procedure after completion of investigation. The injured-claimant further pleaded that after the accident, he remained admitted at Dr. Pankush Arora's Life Care Hospital, Fatehabad as an indoor patient during which, his right leg was amputated. He was discharged on 17.03.2017. He has also remained under treatment at his home at Abohar. Due to the injuries and amputation of leg, he has become permanently disabled to do any work which he was doing earlier. He was still undergoing treatment and injuries have not cured till the filing of the claim petition. The injured-claimant further stated that prior to the accident, he was working as cleaner/helper and was getting Rs.9,000/- per month as salary besides getting Rs.100/- dearness allowances etc. However, due to his permanent disablement, he is unable to do his work. Accordingly, a compensation of Rs.19 lacs was demanded by him.

Respondent No. 1 and 2 of the claim petition contested the claim petition and filed their joint written statement raising preliminary objections etc. stating that false case has been registered against respondent No.1-Sita Ram (before the claim petition) to grab money from the respondents in collusion with the local police. Further stated that the truch-tralla was insured with the National Insurance Company Ltd. and policy was valid from 28.10.2016 to midnight of 13.03.2017, thus, liability to pay compensation, if any, would be upon the insurance company.

Respondent No.3 of the claim petition, i.e., Insurance Company filed written statement taking diverse objections including one that the respondent No.1,i.e., driver of the offending vehicle, was not holding valid and effective driving licence. It was also claimed that the claim petition was filed by the claimant-injured in collusion with respondents No.1 and 2 of the claim petition and the truck-tralla has been falsely implicated. That apart, the claimant-injured, was travelling as gratuitous passenger in the canter and, thus, he would not be entitled for compensation. It was also claimed by the Insurance Company that accident had occurred due to rash and negligent driving of respondent No.4 of the claim petition. Though, their case was that no such accident had actually been taken place and case has been framed by the claimant-injured in collusion with respondents No.1 and 2, however, by way of alternative plea, a stand was taken that even if the accident is proved to have occurred, it took place due to the rash and negligent driving of respondent No.4 of the claim petition who was driving Eicher Canter bearing Registration No.PB-22J/8768 rashly and negligently and injuries were received by the claimant-injured who was travelling as a gratuitous passenger and not as a helper.

Stand of respondents No.4 and 5 is that the Eicher Canter was being driven at moderate speed, carefully and with care and caution. In this manner, the accident took place purely and exclusively due to rash and negligent driving of respondent No.1 while driving the truck-tralla.

Respondent No.6 of the claim petition, i.e., insurer of the Eicher Canter has also filed written statement taking a stand that the Canter was being driven without following the rules.

The Tribunal, on the basis of the pleadings, have framed following issues:-

1. Whether the accident dated 07.03.2017 resulting in injuries to petitioner occurred on account of rash and negligent driving of vehicle No.RJ-31-GA-1883 by respondent No.1 or due to negligent driving of vehicle No.PB-22J-8768 by respondent No.4? OPP.
2. Whether the petitioner is entitled to compensation as prayed, if so, to what extent and from whom?OPP
3. Whether the drivers of offending vehicles were not holding a valid and effective driving licence on the date of accident and the vehicle were being driven in violation of the terms and conditions of the insurance policy and Motor Vehicle Act? OPR 3 & 6.
4. Relief.

Several documents were brought on record by both the sides. The claimant-injured has examined himself as PW-1 and also examined Dr. Pankush Arora as PW-2 as well as Dr. Kuldeep Sain as PW-3.He has filed several documents regarding his treatment. Respondents of the claim petition have also produced on record a copy of driving licence of Sita Ram and insurance policy and other documents.

However,no oral evidence was led by the respondents.

The Tribunal has held that accident has occurred due to rash and negligent driving of the the truck-tralla and, as such, considering his income to be Rs.9,000/- per month, compensation amount has been calculated and granted by passing the impugned award.

Learned counsel appearing for the appellant-Insurance Company has chiefly raised two issues. The first and foremost issue is that, since the Eicher Canter has struck the truck-tralla from behind, i.e., the rear side, it cannot be held that accident took place due to negligent and rash driving of the truck-tralla. He refers to Section 23 of the Rules of Road Regulation, 1989, to impress upon this Court that the driver of the vehicle who is plying behind another vehicle would be required mandatorily to maintain a safe distance from the vehicle plying in the front.

He has also placed reliance upon a decision of Hon'ble Apex Court rendered in **Nishan Singh and others Vs. Oriental Insurance Company Ltd. through Regional Manager and others, 2018 AIR (SC) 2118** that a distance of two to three seconds gap in ideal condition would be enough to avert collision and to allow following driver to respond. However, in that case the distance being maintained by the driver was admittedly 10-15 feet which was considered not to be safe distance from the driver of the car.

In the case in hand, the driver of the offending vehicle did come up to get him examined as a witness. He could have been the best person to say as to what speed was being maintained by him and why he had applied breaks etc. Same is the case with the other side as the driver of the canter has also not been examined. However, there cannot be a presumption that, if a vehicle was hit on the highway from rear that would definitely mean it was not maintaining a safe distance especially when, such as in the present case, the offending vehicle over-took the canter and went ahead and then suddenly applied the breaks according to the claimant. There is no material on record to come to the conclusion that no safe distance was being maintained by the canter. Rather,in the evidence, it has come that there was a distance between 200 meters between them. However, it was a peculiar circumstance when the truck speedily overtook the canter went ahead and applied breaks suddenly. This clearly indicates towards rash and negligent driving by the driver of the truck who did not have courage to produce himself as a witness in this case.

So far as the contributory negligence is concerned, in the same judgment as discussed above, the Hon'ble Apex Court had held that the question of contributory negligence would arise when both parties are involved in accident due to rash and negligent driving. However, in the present case, the rash and negligent driving has prima facie been proved by the claimant. Now, it was on the part of the respondent to rebut it and prove it otherwise which they have miserably failed to do. As such, this case cannot be taken up under the head of contributory negligence.

The second point which has been raised by counsel for the appellant-insurance company is that the injured-claimant has not produced any document regarding payment of any salary etc. as also regarding his employment with the owner of the truck and, thus, he should be considered as gratuitous passenger and not as cleaner of the truck.

This limb of argument advanced on behalf of the appellant-Insurance Company is also rejected.

Question is as to whether a *Khalashi* or *cleaner* whenever is taken in employment whether any proof of such employment or registered of such employment or payment of salary is practically maintained by the vehicle owners. In almost all the cases, it is not being done. They may be simply employed and given wages.

However, the Tribunal, since no document could be produced on record by the claimant, has merely granted him privilege under the Minimum Wages Act, which has been fixed by the State of Haryana. Learned counsel for the appellant has produced a document showing minimum wage rates revised in Haryana effective from January 01, 2017. It appears therefrom that for unskilled person, the rate is Rs.8280.2/- monthly and for semi-skilled-A, it is Rs.8694.2/- monthly and for semi-skilled-B, it is 9128.91/- monthly. It is submitted that he can only be given Rs.8280/- or at best Rs.8694/- in the present case.

Whether cleaner/helper of a vehicle can be termed as unskilled or semi-skilled would be a question, this Court would not likely to go into for the reason that the fact has been proved that the claimant-injured received injuries in an accident which had occurred due to rash and negligent driving of the truck and since he could not produce any document regarding his employment, he has been considered for benefit under the minimum wage rates prevailed in Haryana. Even if it is assumed that the claimant is to be considered as unskilled or semi-skilled, the difference would be of a meagre amount of 300 or 400 rupees monthly. For such a meagre amount, the insurance company is not expected to file an appeal dragging the poor victim to this Court.

Thus, in my opinion, this matter does not require any interference on that count also.

As a result, this appeal, being devoid of any merit, is hereby dismissed. However, there would be no order as to costs.

**(DR. RAVI RANJAN)**
**JUDGE**

09.01.2019
Anjal

**Whether speaking/reasoned? Yes/No**
**Whether reportable? Yes/No**