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

\*\*\*\*

**FAO No.4847 of 2014**

**Date of Decision: 15.03.2019**

Menka and others

Appellants

Versus

Kaushal Kumar and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Vinod K. Kanwal, Advocate for  
Mr. Ashit Malik, Advocate  
for the appellants.

Mr. Rajneesh Malhotra, Advocate  
for the Insurance Company.

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**AVNEESH JHINGAN, J (Oral):**

The award dated 16.12.2013 passed by the Motor Accident Claims Tribunal, Sonipat [for brevity 'the Tribunal'] has been assailed by the legal heirs of Nahna @ Mukesh challenging the contributory negligence attributed to the deceased who was driving Maruti Van bearing registration No. HR-69A-8097 [hereinafter referred to as 'Maruti Van'].

A motor vehicular accident took place on 26.08.2012 at about 06:00/06:30 A.M. near village Rai, District Sonipat. The vehicles involved in the accident were Maruti Van and Container bearing registration No. HR-55J-6567 [hereinafter referred to as 'offending vehicle']. In the accident, five occupants of Maruti Van died at the spot.

In the claim petition filed, the Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to contributory negligence of both the vehicles and the ratio opined was of 2/3<sup>rd</sup> and 1/3<sup>rd</sup> i.e. 2/3<sup>rd</sup> to the offending vehicle and 1/3<sup>rd</sup> to the Maruti Van. The relevant facts are that the offending vehicle was parked on the road without switching on the parking lights, the Maruti Van which was being driven by the deceased rammed into the stationary offending vehicle. FIR No.264, dated 26.08.2012 was registered at Police Station Rai, on the statement of Krishan Kumar, who was the eye-witness to the accident.

Learned counsel for the appellants contends that the Tribunal erred in holding that there was 1/3<sup>rd</sup> contributory negligence on part of the deceased. He further contends that offending vehicle was parked on the road and parking lights were not switched on. He submits that the accident was result of negligent parking of the offending vehicle.

Learned counsel for the insurer defends the award and argues that accident took place at 06:00/06:30 A.M. in the month of August and it was the time when there was sufficient day light and parked offending vehicle was visible from reasonable distance, thus there was contributory negligence of the driver of the Maruti Van.

The contention raised by learned counsel for the appellants is not well founded. It has been established before

the Tribunal that the accident took place at 06:00/06:30 in the morning. The accident is of month of August i.e. when there is early sunrise. The Tribunal rightly considered the fact that impact of the Maruti Van into the stationary vehicle was such that all the five occupants of Maruti Van died at the spot. Krishan Kumar, eye-witness deposed before the Tribunal as PW-2. In his statement, he has stated that there was sufficient day light at the time of accident.

Moreover, from the perusal of the FIR, it is forthcoming that it was stated that the offending vehicle was parked at G.T. Road. The driver of Maruti Van tried to maneuver the Van from stationary offending vehicle, as he never got space to overtake the offending vehicle, he rammed into the stationary offending vehicle. This itself shows that Maruti Van was being driven rashly and negligently, and inspite of seeing the offending vehicle, he failed to stop the Maruti Van well within time and rammed into the offending vehicle.

No interference is called for in the findings recorded by the Tribunal with regard to contributory negligence.

The appeal is dismissed.

[AVNEESH JHINGAN]  
JUDGE

March 15, 2019  
*pankaj baweja*

1. Whether speaking/ reasoned

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Yes
2. Whether reportable

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Yes