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

1. **FAO No.4017 of 2018 (O&M)**
Date of Decision: 08.01.2019

Rajender Singh and another Appellants
Vs
Sunita Devi and another Respondents

2. **FAO No.4018 of 2018 (O&M)**

Rajender Singh and another Appellants
Vs
Om Parkash and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. J.P. Sharma, Advocate
for the appellants.

Mr. Sanjeev Kodan, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

[1]. Vide this common order FAO Nos.4017 and 4018 of 2018 are being decided. As similar issue is involved in both the appeal, therefore, common facts are being noticed.

[2]. Appellants are the driver and owner of the offending truck bearing registration No.HR-66-7365. The truck was insured with respondent No.2/Iffco Tokio General Insurance Company Ltd.

[3]. The accident in question took place on 11.06.2015,

when claimant Om Parkash along with his wife Sunita was going in his relation for some work in their car bearing registration No.HR-12U-2337. At about 9.30 p.m., when they reached at Nizampur Chungi, Narnaul, the offending vehicle came in a rash and negligent manner which was being driven by appellant No.1. The vehicle lost its control and hit the vehicle of the claimant(s). The claimant(s) received multiple injuries and the vehicle was also damaged.

[4]. The Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') framed the following issues in the claim petition(s):-

1. *Whether the petitioners received injuries in a motor vehicular accident which took place on 11.06.2015 at about 9.30 AM in the area of near Nizampur Chowki, Niamapur road, Narnaul due to rash and negligent driving of Truck bearing registration no.HR-66-7365 by respondent No.1? OPP*
2. *If issue no.1 is proved whether the petitioners are entitled to get compensation if so to what amount and from whom? OPP*
3. *Whether the vehicle in question was being driven by respondent no.1 in violation of terms and conditions of insurance policy? OPR3”*

[5]. Issue No.1 was decided in favour of the claimants thereby holding that the accident in question took place due to rash and negligent driving of truck bearing registration No.HR-

66-7365.

[6]. While deciding issue No.2, it was held by the Tribunal that there was a head on collision between both the vehicles, when the offending vehicle was in the process of overtaking a motorcycle. The headlights of both the vehicles were damaged due to head on collision. The appellants and the Insurance Company of Truck bearing regn. No.HR-66-7365 were held liable to indemnify the claimants in equal and 50% of the total amount was ordered to be paid by the appellants and the remaining 50% of the amount was to be paid by the Insurance Company.

[7]. It appears from the findings recorded by the Tribunal under issue No.3 that the Tribunal has misdirected itself in assessing the evidence on record. The findings under issue No.3 are to the effect that there was no violation of terms and conditions of the insurance policy and the Insurance Company was held liable to indemnify the owner in accordance with terms of the insurance policy.

[8]. In view of aforesaid anomalous situation, even appellants filed an application before the Tribunal for clarification of the award and the same has been dismissed vide order dated 14.05.2018. That is how the appellants have preferred the present appeal challenging the main award as well

as the order dated 14.05.2018 passed by the Tribunal.

[9]. Apparently, the owner, driver and Insurance Company of the offending vehicle HR-12U-2337 have not been impleaded in the aforesaid case. The findings have been recorded by the Tribunal that the accident in question took place due to head on collision between both the vehicles. The Tribunal has not recorded any finding regarding contributory negligence of any of the vehicle on the basis of substantive intensity and default of the vehicle. At the same time, the Tribunal has bifurcated the compensation inter se between driver, owner and Insurer of offending vehicle No.HR-66-7365.

[10]. In view of aforesaid position, the impugned award passed by the Tribunal needs to be revisited by the Tribunal. Consequently, both the appeals are disposed of. The Tribunal is directed to pass afresh order in accordance with law. The parties would be at liberty to get the driver, owner and Insurer of the car bearing registration No.HR-12U-2337 impleaded in accordance with law. The amount deposited by the Insurance Company/respondent No.2 shall be credited in a fixed deposit receipt in a nationalized Bank carrying maximum interest.

January 08, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No