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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 28.08.2019*

\+ MAC.APP. 679/2019, CM APPL. 31947/2019
& CM APPL. 31948/2019
IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant
Versus

JAGJIT KAUR & ORS ..... Respondents

\+ MAC.APP. 680/2019, CM APPL. 31956/2019 & CM APPL. 31957/2019
IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant
Versus

OM PRAKASH & ANR ..... Respondents

Through: Ms. Suman Bagga, Advocate for appellant.
Mr. Anshuman Bal, Advocate for caveator.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CAV 715/2019

1. Since counsel enters appearance for the caveator, the caveat stands discharged.
2. The application stands disposed-off.

MAC.APP. 679/2019, CM APPL. 31947/2019, CM APPL. 31948/2019, MAC.APP. 680/2019, CM APPL. 31956/2019 and CM APPL. 31957/2019

3. This appeal impugns the award of compensation dated 03.05.2019 passed by the learned Tribunal in MACP No. 1493/2016 & MACP No. 1394/2016 on the ground that contributory negligence has not been apportioned to the motorcyclist, who hit the insured vehicle from its rear.

4. It is the appellant's case that the motorcycle was being driven at a rash and uncontrollable speed, resultantly it crashed into the insured vehicle. Therefore, some degree of contributory negligence of the motorcyclist should be fixed.

5. The appellant refers to the Mechanical Inspection Report (at page 79 of the paperbook) which confirms that the motorcyclist had crashed into the vehicle ahead of it. It is contended that a careful and safe driver would always keep sufficient distance with the vehicle ahead, so as to avoid any such collision, with it in the event of sudden halting or lessening of speed of the one ahead.

6. While the said argument is attractive at first blush, what has to be kept in mind is that- it is not in every instance that a safe distance would always prevent the collision, especially in instances where the vehicle ahead is being driven in a rash and negligent manner which may include zig-zag driving or a sudden application of brake in the middle of the road, which is exactly the sequence established in the present case.

7. The impugned order has dealt with the issue as under:-

"11. ***ISSUE No. 1 in MACP No. 1493/16***

Whether Sh. Sukhinderjit Singh Chahal sustained injuries in a motor vehicle accident dated 26.11.2011 due to rash or negligent driving of vehicle no. DL 1T 2249 by R-1 ...OPP

AND

ISSUE No. 1 in MACP No. 1394/16

Whether Sh. Om Prakash sustained injuries in a motor vehicle accident dated 26.11.2011 due to rash and negligent driving of vehicle no. DL 1T2249 by R-1 ? ...OPP

The onus to prove the above-said issue no. 1 in both the cases bearing MACP NO. 1493/16 & MACP No. 1394/16 was upon the petitioners therein and in order to discharge the said onus , the petitioners have examined PW- Om Prakash (PW-2 in MACP No. 1493/16 and PW-1 in MACP No. 1394/16), who has filed his evidence by way of affidavits (Ex. PW-2/A in MACP No. 1493/16 and Ex. PW-l/A in MACP No. 1394/16), wherein it has been stated that on 26.11.2011 at about 3:00 PM, he alongwith Sukhinderjit Singh was going on motorcycle towards Airport. PW- Om Prakash further deposed that motorcycle was being driven by Sukhinderjit Singh Chahal and he was sitting on pillion seat and when they reached at road leading from Dhaula Kuan to Gurgaon side, ahead 200 mtrs from foot over bridge, Delhi Cantt, a taxi bearing no. DL 1T 2249, which was going ahead of their motorcycle and was being driven by its driver most rashly and negligently and the driver of the said taxi suddenly applied emergency brakes as a result of which, their motorcycle struck

with the taxi and in the accident, he was grievously injured and Sukhinderjit Singh Chahal died due to the injuries received in the accident. PW - Om Prakash also deposed that accident took place due to rash and negligent driving on the part of respondent no. 1, who was at a very fast speed and suddenly applied brakes without any indication and without giving any chance to the motorcycle to stop.

The important fact is that the above-said witnesses i.e. PW-Om Prakash was cross examined by Ld counsels for respondents, but nothing material has come on record which could assail the credibility or trustworthiness of this witness.

In his cross examination by the Ld. counsel for the respondents, PW-Om Prakash stated that he was pillion rider on the motorcycle at the time of accident and he was not wearing helmet at that time, however driver was wearing the same. PW- Om Prakash further stated that motorcycle had hit the offending vehicle from behind as the driver of the offending vehicle applied brakes all of a sudden. PW-Om Prakash denied the suggestion that motorcyclist had hit the stationary vehicle or that motorcycle was being driven at a fast speed. PW-Om Prakash further denied the suggestion that accident occurred due to negligent driving of the motorcyclist. PW-Om Prakash also denied the suggestion that he was deposing falsely at the instance of the petitioners.

Further, in regard to above-said issue no.1, R-2/ insurance company has also examined R3W1 SI Sanjay Panghal, who deposed that he was the 3rd IO of the case and charge sheet and DAR were filed by

him. He further stated that site plan already Ex. PW-1/5 was prepared by 1st IO ASI Suresh Chand and was handed over to him by the 2nd IO Ram Kishan. R3W1 deposed that he has also gone to the spot of accident and there was no infirmity in the site plan and that from inspection of the vehicle, he could gather that motorcycle of the victim had hit the offending vehicle from backside, however the testimony of this witness i.e. R3W1 is not of much use to the respondents in the instant case as *admittedly R3W1 was not an eye witness to the accident and he has not deposed anything about the manner in which the accident took place. In fact, in his cross examination by Ld counsel for the petitioners, R3W1 has specifically stated that he was not the person, who had visited the place at the time of accident or seen the accident taking place on that day.*

Hence, in view of the above discussion & observations and having regard to the fact and circumstances of the present case, it is evident that deceased Sukhinderjit Singh Chahal received fatal injuries and died and petitioner/ injured- Om Prakash sustained injuries in motor vehicle accident due to rash and negligent driving of offending vehicle no. DL 1T 2249, which was being driven and owned by R-1 Bhagwan Dass and insured with R-2/IFFCO Tokio General Insurance Company Ltd at the time of accident.

Accordingly, issue no.1 is decided in favour of the petitioners and against the respondents."

(emphasis supplied)

8. What clearly emanates from the above is that the accident caused due to the rash and negligent driving of the offending insured vehicle.

9. The Court finds no reason to conclude otherwise. The circumstances leading to the accident have clearly been enunciated in the aforesaid portion of the impugned order. Nothing was brought on record to doubt or shake the testimony of PW Om Prakash.

10. In the circumstances, no case is made out to interfere with the Award.

11. The petition is accordingly dismissed.

12. The statutory amount alongwith interest accrued thereon, be deposited into the 'AASRA' Fund.

NAJMI WAZIRI, J

AUGUST 28, 2019/AB