

\$~10

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

%

*Decided on: 12.09.2019*

+ **MAC.APP. 724/2017, CM APPL. 29212/2017 & CM APPL. 38885/2019**

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate.

versus

NIRMALA DEVI & ORS

..... Respondents

Through: Mr. Anshuman Bal, Advocate for R-1  
& R-2.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. This appeal impugns the award of compensation dated 09.06.2017 passed by the learned MACT in MACT No. 57055/16 on the ground that the learned Tribunal has erred in not considering the FIR which was lodged on the basis of a complaint to the police by PW-2, Kamram Rehman Khan, that one unknown vehicle had caused the fatal accident, whereas in his evidence before the learned Tribunal, the said witness had testified apropos the specific identity of the insured vehicle. It is argued that the two self-contradictory statements make testimony of the said witness unreliable, therefore, his entire testimony ought to have been disregarded. The impugned order has dealt with this issue as under:-

*“(ii) No doubt, as per police version, PW Kamram Rehman Khan had made a statement to the police that one unknown vehicle which was coming at very fast speed in a rash and negligent manner hit in their car. But during the cross-examination of PW2, said statement was not shown to him. Nor PW2 was got confronted with said statement. In other words, no opportunity was given to PW2 to explain whether he had made any such statement or not; only suggestion was given that an FIR was registered on his statement, which he denied and further furnished the explanation that police had obtained his signatures on blank papers. In these circumstances, I do not find any reason to disbelieve the version of PW2.*

*(iii) During the cross examination of PW2, one suggestion was given to him that the accident was caused due to negligence of the truck driver which was denied by PW2. By giving the said suggestion, respondent No.4 admitted that the accident was caused due to rash or negligent driving of truck driver. Since, it has been established that deceased was not driving the car, it means that he was a third party for the insurance company of car as well as insurance company of the alleged truck. It means that the claimants have a right to seek compensation either from the insurance company of truck or from the insurance company of car. Being the third party, respondent No.4 cannot refuse to compensate the petitioners mere on the ground that claimants failed to trace out the whereabouts of the truck or its insurer.*

*(iv) Further from the testimony of PW2, it can safely be culled out that the accident was caused due to rash and negligent driving of respondent No.1 as he was driving the car at high speed and hit in the truck after going on wrong side. During inquiry, respondents failed to adduce any other contrary evidence. Though respondents examined R1W1 to establish that the accident was not caused due to his rash or negligent driving. But his testimony is not trustworthy as initially, he denied that no accident had taken place with his car but later on admitted that accident had taken place and*

*other passengers also sustained injuries. In these circumstances, the testimony of RIWI does not inspire any confidence when he deposed that the truck hit in his car or that the accident was caused due to rash or negligent driving of the truck.”*

2. What emerges from the preceding discussion is that if the FIR was registered on the complaint of PW-2, then he ought to have been confronted with the same during his cross-examination before the learned Tribunal. This was not done. Therefore, the said document which was purportedly contradictory could not be considered in evidence. Furthermore, when the appellant/insurer itself had suggested to the said witness that the accident had occurred due to negligence of the truck driver, there was thus an implied admission, that there indeed was negligence of the car driver also, who was driving the vehicle at high speed and hit the truck, after plying the car on the wrong side of the road. Quite clearly, the sole argument raised in the appeal is without basis and is accordingly rejected.

3. There is no merit in the appeal. It is accordingly dismissed.

4. The amounts deposited by the appellant shall be released to the beneficiaries of the Award, in terms of scheme of disbursement specified therein, alongwith interest accrued thereon.

5. Statutory amount, alongwith interest accrued thereon, be returned to the appellant.

**NAJMI WAZIRI, J**

**SEPTEMBER 12, 2019**

RW