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

Decided on: 22.01.2020.

+ MAC.APP. 203/2019

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant

versus

JITENDER PAL SINGH & ORS

..... Respondents

+ MAC.APP. 205/2019

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant

versus

RAJWANT KAUR & ORS

..... Respondents

+ MAC.APP. 209/2019

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant

versus

MAN MOHAN SINGH & ORS

..... Respondents

Through: Mr. A.K. Soni and Mr. Pavan Kumar
Vashisth, Advocates for insurance
company.

Mr. M.L. Bajaj, Advocate for
respondents.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation dated 22.10.2018 passed by the learned MACT in Suit Nos. 536/2011 (MACT No. 357363/2016), 538/2011 (MACT No. 357398/2016) & 537/2011 (MACT No. 357364/2016), apportioning 50% of the liability on the appellant apropos a head on collision between two vehicles which occurred at midnight on 11.08.2010. The unfortunate accident resulted in two fatalities and two serious injuries.

2. The learned Tribunal found contributory negligence on the part of Mr. Jitender Pal Singh – driver of the car bearing registration no. DL-3C-AF-8199. It is the appellant's case that there was no negligence on the part of the driver of the offending vehicle.

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

“ (v) *The car in question was being driven by PW4 Jitender Pal Singh whereas Man Mohan Singh (PW3) was travelling in the said car. In their examination-in-chief they testified that on 11.08.2010 at about 12 o' clock (mid night) they alongwith deceased Sohan Singh @ Sonu and Jhirmal were going from Delhi to Nawa Sahar, Punjab in their car bearing registration No. DL-3C-AF-8199. They further testified that when they reached about 100 yards prior to Banur Sale Tax Barrier, car was collided with a Canter bearing registration No. PB-10CE-7159 all of sudden as the canter was coming from wrong side at high speed in a rash and negligent manner. Due to the accident, all of them sustained injuries.*

(vi) In their cross-examination, they admitted that the car was being driven in the centre of road and they further admitted that though there was a

road divider, but it was slightly ahead to the place of accident and clarified that there was no road divider at the place of accident. They further testified that the offending canter came from wrong side. By deposing so they intended to say that since the road divider was slightly ahead to the place of accident, canter came from wrong side at fast speed and hit in their car.

(vii) In their cross-examination, they further admitted that they had seen the canter from the distance of 100 meter and thereafter, the canter hit them. Counsel appearing for insurance company contented that no reliance can be placed on their deposition as the same is contrary to DD No. 8. No doubt, the deposition of PW3 & PW4 is contrary to the DD No. 8, but during cross-examination neither of the witnesses was got confronted with their previous statement made to the police. Even they were not got confronted with DD No. 8. In other words, no opportunity was given to the witnesses to explain the said contradiction. Since, no such opportunity was given to the witnesses, I am of the view that : the previous statement made to the police and the DD can not ; be used against them.

(viii) From the testimony of PW3 and PW4, it becomes clear that there was no road divider at the place of accident, but it was located a slightly ahead to the spot. From their statement, it can safely be culled out that the offending vehicle came from wrong side from the cut of the road divider. However, from the deposition of PW3 & PW4, it is also clear that they had seen the said truck from the distance of about 100 metre. It means that the car

driver Jitender Pal Singh had sufficient time to take appropriate step to avoid collision, but he failed to do so. Though both the witnesses testified that at the time of accident, car was being driven in the middle of road, but their testimony to that extent appears untrustworthy. Had the car been driven in the middle of road and the offending truck came from the cut of central verge in that situation the truck would be on the extreme right side i.e. near the central verge and the position of the car would be in the middle of the road. But since the accident had taken place, it shows that the car must be driven at the extreme right side towards the center verge. But since car driver (PW4) had seen the truck from the distance of 100 metre, it mean that car driver was not vigilant and due to that reason he failed to take any step to avoid the accident. Thus, there was a contributory negligence on the part of Jitender Pal Singh.

(ix) Considering the facts and circumstances of the case, I am of the view that 50% of the award amount is liable to be deducted from the total award granted in favour of Jitender Pal Singh. However; since deceased Sohan Singh @ Sonu and injured Man Mohan Singh were travelling in the said car, it cannot be said that there was any contributory negligence on their part. Accordingly no amount is liable to be deducted in their case."

4. What emanates from the above discussion is that there was good reason for the learned Tribunal to conclude that the offending vehicle was equally responsible for the accident because it was coming from the wrong side of the road. This very act, *ipso facto*, establishes the rashness and

negligence on the part of the offending vehicle. There is no merit in the appellant's argument. It is accordingly rejected.

5. In view of the above, the appeals are dismissed.

6. The statutory amounts, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court for the treatment and rehabilitation of burn victims.

JANUARY 22, 2020

AB

NAJMI WAZIRI, J

