

In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 1021 of 2020 (O&M)

Date of Decision: 21.02.2022

M/s Universal Sompo General, Insurance Company Limited

... Appellant(s)

Versus

Mandeep Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chandandeep Singh, Advocate
for the appellant(s).

Mr. Aayush Gupta, Advocate,
for the respondent No.1 to 4.

Mr. Nigam K. Bhardwaj, Advocate
for the respondent No.5.

Mr. P.R. Yadav, Advocate
for the respondent No.6 and 7.

Mr. Charanjit Singh, Advocate
for the respondent No.9.

Anil Kshetarpal, J.

1. The insurance company calls in question the correctness of the award passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as “the Tribunal”). The appellant has been held liable to pay the amount of compensation.

2. The learned counsel representing the appellant challenges the findings of the Tribunal on the question of rash and negligent driving of the vehicle bearing registration number plate No. HR-55-F-4390. The learned counsel contends that the driver of the vehicle bearing registration number

Parmar, the only eye-witness, has admitted that the truck bearing registration number plate No. HR-55-F-4390 was being driven at a normal speed. He draws the attention of the Court to the following portion of the statement of Chetan Parmar:-

“I am not in possession of any mechanical report and the plan to show whether the truck had applied brakes or not as alleged by me in my affidavit. Even I have not produced any such mechanic report or the plan on court record to that effect. It is correct that the car hit the truck from behind. There is not much distance between the car and the truck at the time of the alleged accident. It is correct that the truck and car were being driven at a normal speed. It is also correct that the truck was driven on the correct side of the lane. It is also correct that the truck was not driven by its driver rashly and negligently. It is correct that the car was coming behind the truck. It is correct that at the time of accident there was heavy rush on both side of the lane. It is correct that due to the rush the vehicle cannot be driven negligently by the drivers of the vehicles. I was sitting on the back seat other to the side of driver. It is correct that the entire bonet position of the car underneath the truck. Many persons have collected on the spot. Many vehicles have stopped”.

3. Per contra, the learned counsel representing the respondent No.9-Bharti Axa General Insurance Company Limited, has informed the Court that the insurance company has merged with ICICI Lombard General Insurance Company Limited. He further contends that pursuant to the FIR, the charge sheet has been filed against Raghunandan Yadav (the driver of the truck bearing registration number plate No. HR-55-F-4390) in a criminal case. Hence, he contends that the police has already found a, *prima facie*,

truck.

4. The learned counsel representing Raghunandan Yadav contends that in view of the deposition of Chetan Parmar in para 2, in fact, Raghunandan Yadav was not at all rash and negligent, while driving the vehicle on the day of the accident.

5. On a careful reading of the extracted part of the deposition, it is evident that the car had hit the truck from behind. There was not much distance between the car and the truck at the time of the accident. It is also admitted by the witness that the truck and the car were being driven at a normal speed and there was heavy rush of the vehicles on both sides of the lane. Thus, it is not in dispute that the car in which the injured was travelling, had come from behind and struck against the truck which was going ahead of it. Thus, the driver of the car cannot be entirely absolved of the responsibility. It is the case of the claimants that Raghunandan Yadav suddenly applied the brakes of the truck which was going ahead of the car and as a result of it, the car struck the truck from behind. Further, as noticed, Raghunandan Yadav had not entered into the witness box, therefore, an adverse inference is required to be drawn against him. Even otherwise, the evidence of the only eye witness clearly proves that not only the driver of the truck had contributed to the accident, but the driver of the car was also equally negligent. A duty is cast upon the driver of the car, which is coming from behind, to maintain a safe distance in order to avoid accident in case the vehicle going ahead applies sudden brakes. On the other hand, there is no evidence to the effect that the truck had to apply the brakes due to some reason beyond the control of the driver. There is also no evidence that the

driver of the truck did not apply sudden brakes.

6. It would be noted here that while framing charges, the Court holding a criminal trial, expresses a *prima facie* view to the effect that the case is triable. It does not express its final opinion. The Tribunal is required to decide the case on the basis of preponderance of probabilities. The standard of proof is required for proving negligence before the Tribunal is not the same as in a criminal case.

7. Keeping in view the aforesaid facts, the findings of the Tribunal to the effect that the driver of the truck bearing registration number plate No. HR-55-F-4390, which was admittedly going ahead, was solely rash and negligent in applying the brakes are erroneous. Therefore, the same is partially set aside. It is found that the drivers of the truck as well as the car were equally liable. It is a case of contributory negligence.

8. With the observations made above, the liability to reimburse the claimants shall be equally shared by the appellants as well as the respondent No.9. The present appeal stands disposed of.

9. The observations made by this Court while deciding the appeal shall not be binding on the criminal Court.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 21, 2022
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No