

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**  
Sr. No.323

**FAO No.3581 of 2022 (O & M)**  
**Date of Decision:** *September 28, 2022*

IFFCO TOKIO General Insurance Company

..... APPELLANT(S)

*VERSUS*

Maharani Devi & others

..... RESPONDENT(S)

. . .

**CORAM:**      **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

**PRESENT:** - Mr. Sanjeev Kodan, Advocate, for the appellant.

Mr. Arvind Rajotia, Advocate, for respondent Nos.1 to 5.

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**Tribhuvan Dahiya, J (Oral)**

Delay condoned.

2.                    This appeal has been filed by appellant-Insurance company for setting aside Award dated 12.04.2022 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib.

3.                    The facts of the case are, the accident took place on 16.07.2021, and daily diary report (DDR) was lodged on 18.07.2021. To prove negligence of the driver of the offending vehicle/respondent No.6, the respondents/claimants examined CW-2, Munna, as eye-witness. He testified that the accident occurred due to rash and negligent driving of the offending vehicle by respondent No.6, as mentioned in DDR (Exh.C2) itself. As driver

could not control the car when the child suddenly came on the road, it hit the deceased. On appraising the testimony of the eye-witness, the Tribunal held that it can be inferred from the statement that the accident could have been avoided had the car been driven in a controlled manner at moderate speed. As in that situation the driver would have been able to stop the car on sudden appearance of the child on road. Not driving the car in a controlled manner, itself proves negligence on the part of the driver. It was further held by the Tribunal that the fact of non-registration of the FIR is no ground to disbelieve the version of the complainant. The duty of the claimants is only to inform the police which was done by them, and the DDR in question was recorded. If the police did not initiate further proceedings in the matter, the claimants cannot be blamed for it.

4. Further, the Tribunal referred to the statement of RW-1 HC Gagandeep Singh (Annexure A-3) who brought the summoned file pertaining to DDR No.20 dated 18.07.2021 before the court, in which proceedings under Section 174 Cr.P.C. were conducted. The statement of eye-witness Munna is said to have recorded by police on 18.07.2021 in which he deposed that in order to avoid/ save the child, who suddenly came in the middle of the road, the driver could not control the car and struck against deceased. The accident resulted in severe injuries and ultimately, death of the deceased. In his cross examination, RW-1 has stated that the vehicle was driven in an uncontrolled manner, which could not be controlled on sudden appearance of the child on road.

5. By appraising the aforesaid evidence, the Tribunal held driver of the offending vehicle was negligent in driving, which resulted in

the accident in question. Accordingly, the insurance company was made liable to pay the compensation assessed.

6. Learned counsel for the appellant has referred to the DDR/ General Diary Details dated 18.07.2021 (Annexure/A-1), wherein eye witness/CW-2, Munna, stated, *“a child started crossing the road. The driver of the car in order to save the child, lost its control and hit the same with the person, who was going ahead of me. Thereafter, he fell on the road and sustained injuries and the driver of the car stopped his car. I read the number of the Indica Car, which bear the registration No.CH04-7771, Brand Indica Color Silver”*. Learned counsel further submitted that the eye - witness/CW-2, in his cross examination before the Tribunal stated, *“I have given the statement to police on 18.7.2021 while the accident took place on 16.7.2021. The accident took place at around 7.00 P.M. The driver of the car was going on his side of the road but on account of sudden appearance of child the said car could not be controlled, and it struck against the deceased. It is correct that accident could have been avoided if the child had not come on the road. The car was somewhat fast but the respondent No.1 was not able to control the same. It is wrong to suggest that accident took place on account of negligence on part of deceased only or that there is no negligence on part of respondent No.1”*. By referring to the aforesaid statements of the eye-witness, learned counsel for the appellant has submitted that there is contradiction between the two, and, therefore, this witness cannot be believed, nor negligence of the driver can be said to have been established on the basis of statement of this eye-witness. Learned counsel has further placed reliance on the Supreme Court judgment in the

case of *Surender Kumar Arora & another vs. Dr. Manoj Bisla & others*, 2012(4) SCC 552.

7. The argument raised by learned counsel for the appellant does not appear to be sound. A perusal of the record shows that there is no contradiction between the statement of the eye-witness, dated 18.07.2021, before the police, and his testimony before the Tribunal, as CW-2. Rather, his version is consistent both in the statement as well as the deposition, that on account of sudden appearance of the child on road, driver of the offending vehicle lost control which resulted in the accident in question; had he not been driving fast, the accident could have been avoided. No other interpretation can be given to the aforesaid two statements of the eye-witness, nor are the two contradictory to each other. The Tribunal did not commit any illegality or error in recording the finding of negligence on the part of driver of the offending vehicle on the basis of this testimony of the eye witness.

8. The judgment in *Surender Kumar Arora* case (*supra*) relied upon by learned counsel for the appellant, does not, in any manner, improves his case. As it has only been held therein that entire responsibility of proving the act of rash and negligent driving by driver of the offending vehicle is on the claimants. In the facts of the instant case, the onus to prove Issue No.1 regarding rash and negligent driving of the offending vehicle was on the claimants, which was duly discharged by them as is evident from the findings of the Tribunal.

9. In view of the aforesaid, there is no reason to interfere with the findings of negligence recorded by the Tribunal against driver of the offending vehicle. Accordingly, this appeal fails and is hereby dismissed.

10.                    Since the main appeal stands decided, pending applications,  
if any, are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)  
Judge

September 28, 2022  
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| <u>Whether Speaking/ Reasoned:</u> | <u>Yes/ No</u> |
| <u>Whether Reportable:</u>         | <u>Yes/ No</u> |