

133. 2023:PHHC:133326
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4527-2023 (O&M)
Date of decision: 10.10.2023

United India Insurance Company Limited Appellant

Versus

Mamta Rani and others Respondents

2. **FAO-4529-2023 (O&M)**

United India Insurance Company Limited Appellant

Versus

Mamta Rani and others Respondents

3. **FAO-4531-2023 (O&M)**

United India Insurance Company Limited Appellant

Versus

Darpan and others Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sandeep Suri, Advocate, for the appellant(s)

GURBIR SINGH, J.

All the above said three appeals have been filed by the Insurance Company arising out of a common award dated 15.04.2023 passed by Motor Accident Claims Tribunal, Ambala, whereby the claim petitions i.e.

MACP/86/2020 (FAO No.4527 of 2023), MACP/82/2020 (FAO No.4529 of 2023) and MACP/85/2020 (FAO No.4531 of 2023) have been allowed.

Brief facts of the case are that a motor vehicular accident took place on 12.09.2019. As per the common pleadings of the claimants on 08.09.2019, Deval Sharma, Gaurav, Mamta, Mehak and Darpan were travelling in a car bearing registration No.HR04-C-6160, which was being driven by Deval Sharma. On the intervening night of 11/12.09.2019 at about 12.00 'O' clock (midnight), when they reached near Hotel Shree Ram within the area of Village Thana Gujran, Tehsil Pehowa, District Kurukshetra, on Kaithal-Ambala road, two trucks were going ahead of said car. Both the trucks were being driven parallel to each other by their respective drivers. Deval Sharma was driving his car on his correct left side of the road at moderate speed. Respondent-Jaspal Singh, who was driving truck No.HR65-A-6400 and was going ahead of the car of Deval Sharma. On seeing the Hotel Shree Ram, said truck driver, without giving any signal, indication and without following the traffic rules, applied sudden brakes. As a result of which, rear side of the truck struck against the front side of the car of Deval Sharma. Due to the impact of the accident, all the occupants of the car suffered multiple grievous injuries. They were taken to CHC, Pehowa. Injured Mehak was declared as brought dead. Injured Deval Sharma was referred to Civil Hospital, Kurukshetra, but he was taken to Anand Orthopaedic Centre, Kurukshetra where he was admitted in neurosurgery department for treatment. Due to his serious condition, he was advised to be taken to some other hospital for proper management and treatment. He was then taken to Jindal Hospital, Yamuna Nagar from there he was immediately

referred to PGI, Chandigarh, but due to non-availability of ventilator at PGI, his family shifted him to Alchemist Hospital, Panchkula, where he remained admitted from 14.09.2019 to 18.09.2019 and ultimately, he succumbed to the injuries suffered by him in the accident. On the basis of evidence led on the file, the learned Tribunal came to the conclusion that the accident was the result of rash and negligent driving of the truck bearing registration No.HR65-A-6400 by the respondent-Jaspal Singh, causing death to Deval Sharma and Mehak and injuries to Mamta and Darpan. Petitions were allowed and compensation was accordingly awarded.

Learned counsel for the appellant-Insurance Company has argued that the accident was the result of rash and negligent driving on the part of the deceased Deval Sharma, who while driving the car in a rash and negligent manner and without caring for the heavy traffic on the highway, hit the truck going ahead of it from behind for not maintaining proper and safe distance between two vehicles moving in the same direction. Had Deval Sharma maintained safe and proper distance while driving the car, then he would have avoided hitting the truck. The Regulation 23 of the Rules of the Road Regulations, 1989 is as under:-

“23. Distance from vehicles in front-the driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

In fact, the deceased Deval Sharma himself was responsible for the accident as he was driving the car at a high speed and in a rash and negligent manner. Learned counsel has relied upon ***Nishan Singh and***

others Versus Oriental Insurance Company Limited through Regional Manager and others, 2018(2) R.C.R. (Civil) 891 where the Hon'ble Apex Court has held that the expression “sufficient distance” has not been defined in the Regulations or elsewhere. The thumb rule of “sufficient distance” is at least safe distance of two to three seconds gap in ideal conditions to avert collision and to allow following driver time to respond. It is further submitted that the whole approach of Tribunal in calculating, awarding compensation and fastening liability on the appellant is wholly erroneous and arbitrary.

I have heard the submissions of learned counsel for the appellant-Insurance Company.

Admittedly Mehak and Deval Sharma (both since deceased), Mamta Rani and Darpan, injured, were all occupants of the car. The accident took place between the car bearing No.HR04-C-6160 which was being driven by Deval Sharma, with the truck bearing registration No.HR65-A-6400 which was being driven by respondent-Jaspal Singh. The claim petitions under Section 166 of the Motor Vehicles Act, 1988 were filed against the driver, owner and insurer of the truck, for grant of compensation. The Division Bench of this Court in the case in *Parsani Devi Versus State of Haryana and others, 1973 ACJ 531* has held that in case of involvement of two vehicles, the claimant can recover compensation from both the drivers or either of them. In *Khenyei Versus New India Assurance Company Limited and others, (2015) 9 Supreme Court Cases 273*, the Hon'ble Apex Court held as under:-

“22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

In these cases, the claimants have opted to sue driver of the truck only, so the appellant cannot say that they are not liable to pay any amount of compensation. The extent of negligence for the purpose of their inter se liability, if any, was not required to be determined in these cases and

the same is to be decided in appropriate proceedings.

The Insurance Company has also filed an appeal i.e. FAO No.4534 of 2023 arising out of MACP/81/2020 against the same award, on account of death of Deval Sharma, driver of the car. The question whether Deval Sharma, who was driving the car bearing No.HR04-C-6160, was negligent or not, is left open to be decided in the said appeal.

All the three appeals are without any merit and the same are accordingly, dismissed.

(GURBIR SINGH)
JUDGE

October 10, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No