

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 213)

(1) FAO-3448-2013 (O&M)
Date of Decision : 11.04.2023

ORIENTAL INSURANCE COMPANY LTD.

...Appellant

Versus

HARMESH KUMAR AND ORS

...Respondents

(2) FAO-3449-2013 (O&M)

ORIENTAL INSURANCE COMPANY LTD.

...Appellant

Versus

BIRKA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.N. Singal, Advocate for the appellant.

Mr. Rajneesh Malhotra, Advocate with
Ms. Yagyasree Singh, Advocate
for respondent No. 7 in FAO-3448-2013 and
for respondent No. 6 in FAO-3449-2013.

Ms. Sahiba Joshi, Advocate for
Mr. S.S. Rangi, Advocate
for respondent No. 7 in FAO-3449-2013 and
for respondent No. 8 in FAO-3448-2013.

Harsimran Singh Sethi J. (Oral)

The aforementioned two appeals filed by the Oriental Insurance

Company Limited, which arise out of the same incident, are being decided

by this common order.

On 26.08.2007, Bus No. PB-10-BW-2697 being driven by one Gurprit Singh son of Harkanwal Singh met with an accident with a Tipper bearing No. PB-07-T-0513 and in the said accident, two occupants of the Bus, namely, Kamla and Kartari as well as the driver of the Tipper lost their lives. Keeping in view the said accident, an FIR was registered being FIR No. 122 dated 26.08.2007, under Sections 279, 304-A, 338, 427 IPC against the driver of the Tipper, namely, Balwinder Singh, who died in the accident. It may be noticed that the said FIR was got registered on the statement of the driver of the Bus, namely, Gurprit Singh.

Keeping in view the accident, in which two occupants of the Bus died, claim petitions were filed before the Motor Accident Claims Tribunal to claim compensation. On the basis of the evidence, which came on record, the Tribunal returned a finding that Gurprit Singh son of Harkanwal Singh, who was driving the Bus No. PB-10-BW-2697 was negligent in driving and due to the said negligence, the accident occurred and three persons lost their lives and compensation was awarded by the Motor Accident Claims Tribunal, Hoshiarpur vide impugned Award dated 04.03.2013 to the claimants.

Learned counsel for the appellant-Insurance Company argues that once the FIR was registered against the driver of the Tipper, it cannot be said that the negligence was on the part of the driver of the Bus hence, the findings being recorded by the Tribunal are incorrect and at the most, it can be a case of contributory negligence, which factor has been ignored by the Tribunal while passing the Award.

Learned counsel appearing on behalf of the Bajaj Allianz General Insurance Company Limited, i.e. the Company which has insured the Tipper, submits that the arguments being raised by the appellant are contrary to the facts. Learned counsel submits that though, it has been mentioned in the impugned Award that the FIR was got registered against the driver of the Tipper but actually the FIR was registered against driver of the Bus, namely, Gurprit Singh, which fact has already come on record during the evidence.

Learned counsel for the appellant has not been able to rebut the said fact that FIR is against the driver of the Bus, Gurprit Singh. That being so, the argument of the learned counsel for the appellant that the FIR was against the driver of the Tipper, namely, Balwinder Singh, who had also died in the accident, hence, the negligence could not have been put upon the driver of the Bus being driven by Gurprit Singh, cannot be accepted.

Further, learned counsel for the appellant has not been able to point out any perversity in the findings recorded by the Motor Accident Claims Tribunal, wherein rash and negligent driving has been attributed to the driver of the Bus, namely, Gurprit Singh. The findings have been recorded on the basis of the testimony of the witnesses, wherein, they had accepted that the driver of the Bus was driving the Bus in a negligent manner. That being so, once, no perversity has been pointed out in the findings of the Tribunal and rather the findings have been based upon the statement of the witnesses, the argument that the present is a case of contributory negligence, cannot be accepted.

No further argument was raised.

Keeping in view the above, as no perversity in the findings have been pointed out by the learned counsel for the appellant, no ground is made out for interference by this court in the present appeals.

Dismissed.

CM-14042-CII-2013 and CM-14043-CII-2013 in FAO-3448-2013 and CM-14044-CII-2013 and CM-14045-CII-2013 in FAO-3449-2013

As the main appeals have been dismissed, the present applications also stand dismissed.

April 11, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No