(2018) 08 RAJ CK 0125

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 2097 of 2018

Iffco Tokio General Insurance Company Limited @APPELLANT@Hash Smt. Hakri

Date of Decision : 21-08-2018

Acts Referred:

Citation : (2018) 08 RAJ CK 0125

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Jagdish Vyas, Bharat Singh

Final Decision : Dismissed

Judgement

This appeal is directed against the judgment and award dated 09.04.2018 passed by the Motor Accident Claims Tribunal No.1, Udaipur (â??the

Tribunalâ??), whereby the Tribunal has awarded a sum of Rs.1,16,835/- alongwith interest @ 8.5% p.a. from the date of application i.e. 09.09.2016

as compensation to the claimant â?" respondent No.1.

Application for compensation was filed by the claimant interalia with the averments that on 14.08.2016 at about 9:30 a.m., she was travelling as a

pillion-rider on the motor-cycle of her husband Kailash, when another motor-cycle which was being driven rashly and negligently in front of their

motor-cycle, suddenly was turned towards the petrol-pump, resulting in both the motor-cycles colliding with each other and claimant suffering injuries.

It was claimed that the injured was aged 19 years and used to earn Rs.7,000/- per month by agriculture operation. Based on the said submissions,

compensation to the tune of Rs.11,32,000/- was claimed.Â

The claimant impleaded her husband-Kailash, Â Chhogalal â?" the owner & driver of the alleged offending motor-cycle and insurer of the motor-cycle, and one Ram Lal â?" owner of the motorcycle being driven by Kailash.

A reply was filed by Kailash, husband of the claimant interalia indicating that the driver of the another motor-cycle suddenly without giving indicator

turned towards the petrol-pump, which resulted in the accident and that he was not responsible for the accident.

The insurance company filed its reply indicating that no accident occurred from the insured vehicle. The allegations were made regarding the

excessive compensation being sought.

Based on the pleadings of the parties, the Tribunal framed four issues. On behalf of the claimant, two witnesses were examined and 25 documents

were exhibited. No evidence was led by the non-claimants.

After hearing the parties, the Tribunal came to the conclusion based on the statements of eye-witness AW-2 Mangilal that Chhogalal suddenly turned

his motor-cycle towards the petrolpump, which resulted in the accident. As no evidence was led by the insurance company, the insurance company

was held liable for payment of compensation.Â Thereafter, the Tribunal assessed the disability and awarded compensation to the tune of

Rs.1,16,835/as noticed herein-before.

It is submitted by learned counsel for the appellant that the Tribunal committed grave error in coming to the conclusion that the accident occurred on

account of rash and negligent driving by the driver of the insured vehicle. It was submitted that the circumstances of the case clearly indicates that the

husband of the claimant was negligent in driving the motor-cycle as he had hit the insured vehicle from behind and therefore, it cannot be said that the

accident occurred on account of any negligence on part of the driver of the insured vehicle and therefore, the finding in this regard deserves to be

quashed and set-aside.

Further submissions were made that pertaining to the accident, the challan was filed against respondent â?" Kailash and not against the driver of the

insured vehicle and Kailash did not appear in the witness-box and therefore, in absence of his testimony, finding regarding negligence could not have

been recorded.

Submissions were also made that there were gross contradictions in the statements of Smt. Hakri, the claimant and the so-called eye-witness Mangilal and therefore, on that count, the finding in this regard deserves to be quashed and set-aside.

Â Reliance was placed on judgment of Hon'ble Supreme Court in Nishan Singh & Ors. v. Oriental Insurance Company Limited : 2018 ACJ 1466.

Learned counsel appearing for the respondent-caveator supported the judgment impugned. It was submitted that no evidence was led by the insurance

company and/orÂ any of the respondents and therefore, it is not open for the said respondents to question the finding recorded by the Tribunal in this

regard.

Submissions were made that as the claimant suffered serious injuries; FIR could not be lodged by them and the driver of the insured vehicle lodged the

FIR after two days, based on which, the challan was filed. It was submitted that nothing turns on the fact that challan was filed against the driver of

the motor-cycle, on which the injured was travelling as pillion rider. It was submitted that even if there was some negligence, though nothing was

proved on record, qua the pillion rider, the same would be a case of composite negligence and therefore, on that count also appellant Insurance

Company cannot shirk its liability from paying compensation. It was submitted that the statement of eye-witness Mangilal is very specific and is

supported by site map prepared by the police, which clearly indicates that the offending motor-cycle which was plying ahead of the motor-cycle, on

which the claimant was travelling, was suddenly turned and came in front of the motor-cycle, which resulted in the collusion and the accident and

therefore, the judgment in the case of Nishan Singh (supra) has no application.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It was the specific case of the claimant that she was riding as pillion rider on the motor-cycle when the offending motor-cycle which was plying ahead

of the motor-cycle suddenly turned, resulting in the collusion. For the said purpose, she herself was examined and one independent witness Mangilal

was also examined. The statements of both the witnesses clearly supported the plea raised in this regard.Â Once a two wheeler, which is plying on a

straight road, suddenly turns and the vehicle following the said vehicle collides with the said vehicle, which is a natural consequence, it cannot be said

by any stretch of imagination that the following vehicle was negligent. The plea of keeping a safe distance based on judgment in the case of Nishan

Singh (supra) apparently has no application, inasmuch as, in a case of two wheeler where more than one vehicle normally runsÂ parallel, the principle

of keeping a safe distance does not apply and therefore, the judgment in the case of Nishan Singh (supra) would have no application.

Besides the above, in view of the vehement insistence on part of the appellant Insurance Company regarding some negligence being attributed to the

driver of the motor-cycle on which the claimant was riding as pillion rider, even if the same is accepted, in view of the judgment of Honâ??ble

Supreme Court in the case of Khenyei v. New India Assurance Company Limited & Ors.Â :Â (2015) 9 SCC 273, qua the claimant, who was a

pillion rider, the same would be a case of composite negligence and therefore, in so far as the liability of the insured vehicle as well as the appellant

Insurance Company is concerned would not be effected by that.Â Â

In view of the above discussion, the finding recorded by the Tribunal pertaining to the negligence of the driver of the insured vehicle cannot be faulted.

Consequently, there is no substance in the appeal and the same is, therefore, dismissed.