

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

**FAO No.1667 of 1997 (O&M)
Date of Decision: July 26, 2016.**

National Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Sandeep Madan and others

.....RESPONDENT(s).

(2)

FAO No.1670 of 1997 (O&M)

National Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Lajwanti Devi and others

.....RESPONDENT(s).

(3)

FAO No.1671 of 1997 (O&M)

National Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Dayawanti Devi and others

.....RESPONDENT(s).

(4)

FAO No.1672 of 1997 (O&M)

National Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Bimla Devi and others

.....RESPONDENT(s).

(5)

FAO No.1673 of 1997 (O&M)

National Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Sai Ditta Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Narender Kajla, Advocate
for Mr. Amit Singla, Advocate
for respondent No.2.

Mr. Vinod Gupta, Advocate
for respondent No.5.

SURINDER GUPTA, J.

The above captioned five appeals have been filed by National Insurance Company, challenging the award passed by Motor Accident Claims Tribunal, Hisar (later referred to as 'the Tribunal') allowing compensation for the death of four persons and injury to claimant-respondent Sandeep Madan in a motor vehicle accident with truck bearing registration No.HR24-A-8290(later referred to as 'the offending vehicle').

The case of the claimants, in brief, is that on the intervening night of 16/17 September, 1994 at about 3.00/4.00 A.M., Hanuman Tayal, Bharat Bhushan, Chander Shekhar and Dinesh Mehta, all deceased and Sandeep Madan injured (PW8) were going in a Maruti car bearing registration No.DDU-5077 from Fatehabad towards Sirsa. About 3/4 kilometres beyond Dariyapur towards Sirsa, the offending vehicle had been parked in the middle of the road without any indicator to warn the approaching traffic. The car rammed into the stationary truck, resulting in death of four persons and injuries to Sandeep Madan.

Respondents No.1 and 2 contested the claim petition with the plea that the truck has been parked on the left side of the road as it had developed some mechanical defect. The accident had taken place due to

rash and negligent driving of Maruti car by its driver Dinesh Mehta.

National Insurance Company (appellant) also contested the claim petitions with the similar plea as raised by respondents No.1 and 2.

The Tribunal recorded finding that the accident had taken place as the offending vehicle was parked in the middle of the road, without any warning or signal and awarded compensation to the claimants as mentioned in concluding para of the award.

Learned counsel for the appellant has argued that the insurance company is not challenging the quantum of compensation and has put forth only plea that the Tribunal has ignored this fact that the car in which the deceased and the injured were travelling, had rammed into the offending vehicle from behind, as such, there was contributory negligence of the driver of the car to some extent, may be in the ratio of 25:75. Firstly, the driver of the truck has stated that he had parked the truck on the left side of the road with proper indicators and secondly, even if, there was lapse on the part of driver of the offending vehicle, the driver of Maruti car could see the truck and apply brakes to avoid the damage to the lives of the occupants of the car. The car rammed into the offending vehicle, resulting in four deaths. This shows that it was being driven at a very high speed and could not be controlled on seeing the parked truck.

Learned counsel for the appellant relying on the observations in cases of ***Jaspal Kaur and others Vs. Sach Khand Bricks Gram Udyog and others (2013-4) P.L.R. 489***; ***Lachmi and others Vs. Ranjit Singh (1995-2) P.L.R. 308***; and ***Subhash Chand and others Vs. Satya Rani and others (2013-3) P.L.R. 329***, has argued that liability of driver of the offending

vehicle as well as car be apportioned in the ratio as deemed fit by this Court.

Learned counsel for respondent No.5 has argued that the accident had taken place around 3.00/4.00 A.M. when it is pitch dark. If a truck has been parked in the middle of the road without any indicator or light and some vehicle rammed into the truck from behind, the driver of that vehicle cannot be held to be liable for the accident. The Tribunal has taken note of the above submissions, which were advanced by learned counsel for the insurance company before it and has rightly reached the conclusion based on evidence that there was no negligence or contributory negligence on the part of driver of the car.

I have given a careful thought to the submissions of learned counsel for the parties, perused the award and the paper book and have also gone through the citations referred by learned counsel for the appellant.

The record of the Tribunal is not available due to the fire incident that occurred on 30.01.2011. Counsel for the appellant has supplied copy of the statement of PW8 Sandeep Madan and RW1 Jangir Singh which have been perused.

The only issue which call for determination in this appeal is as to whether the accident was caused due to negligence of driver of the offending vehicle or because of contributory negligence on the part of driver of the car in which deceased and injured were travelling. The Tribunal has taken note of the argument advanced by the insurance company that there was negligence of the driver of the car and observed in para 9 as follows:-

“9. He also denied as incorrect the suggestion that in addition to parking lights, a lantern was

also hung on the rear of the truck which suggestion is inconsequential because the respondent driver Jagir Singh while appearing as RW; has categorically admitted during his cross-examination on behalf of respondent No.1 that except for placing branches of trees and putting on the parking lights, he had not placed any other articles to warn the approaching traffic of the stationary vehicle. The suggestion to PW8 that the parking lights of the truck had got damages on account of the accident does not find any corroboration from any other material such as the report of any mechanic who may have examined the vehicle after the accident. It may also be noticed that the respondent truck driver Jagir Singh RW1 has stated in his examination-in-chief that after his having gone away from the spot to fetch a mechanic in view of his truck having developed mechanical problem, he had returned thereto only on the next morning at which time he had noticed that a car had dashed against the rear side of his stationary truck but during his cross-examination on behalf of the petitioner, he admitted that he had not returned to the place of accident after leaving the truck on account of its having developed a mechanical problem and he was told of the accident only by his conductor. It is thus evident that the conductor was also present who could have been examined by respondents No.1 and 2 to show as to what pre-caution, if any, was taken by the respondent truck driver Jagir Singh in order to warn the approaching traffic of the stationary truck but he has not been so examined and therefore, no much reliance can be placed on the sole uncorroborated testimony of respondent truck driver Jagir Singh regarding his having taken the truck to the berm of left hand side of the road more so when it is his own case that the truck had stopped suddenly due to engine failure meaning thereby that this truck could not have been

pushed on to the extreme left hand side of the road which is not even his case. Thus the testimony of injured eye witness Sandeep Madan regarding this truck having been parked in the middle of the road without any parking lights or any other indication cannot be doubted.”

On perusal of the statement of Jangir Singh, driver of the offending vehicle, I find that near village Dariyapur, his truck had developed some defect and stopped. He has stated that he had put on the parking lights and also placed tree branches on the driver side as well as on the front and rear side to warn the approaching traffic and then left the spot to fetch a mechanic. He returned next morning with the mechanic and noticed the accident. However, in his cross-examination, he stated that he did not reach the spot after the occurrence and the conductor told him about the manner in which the accident had taken place. Testimony of this witness was rightly discarded by the Tribunal as he was not present at the spot, rather it was conductor of the offending vehicle, who was present at the time of accident, has not been examined. The testimony of this witness that some parking light was on, cannot be believed, particularly in view of the statement of eyewitness Sandeep Madan (PW8), who has stated that the offending vehicle was parked in the middle of the road without any indicator or parking light. The driver of the car could not notice the standing truck in the dark of night. He noticed the truck when the car came near it but by that time, it could not be stopped from hitting the offending vehicle. He has specifically stated that the accident in question took place due to negligence on the part of driver of the offending vehicle, who parked the truck in the middle of the road during night hours without any indicator

or parking light. The statement of this witness is unshattered in the cross-examination and prove that accident had taken place as respondent No.1 i.e. driver of the offending vehicle had left the vehicle in the middle of the road after it had developed some defect and did not care to take necessary precaution of putting on some indicator or light for the traffic going on the road.

I have gone through the citations referred by learned counsel for the appellant. Each case has its own peculiar facts and circumstances. The contributory negligence of the driver of the vehicle which hit stationary vehicle was fixed keeping in view the facts and circumstances of the cases referred by learned counsel for the appellant. If a vehicle is parked in the middle of the road during night time and some vehicle coming on road ram in it, no inference can be drawn that driver of vehicle coming on road was negligent. If a person is driving vehicle at a reasonable speed during night hours, he may notice stationary vehicle or any other substance lying in the middle of the road only when he reaches very near and by that time, despite applying full brakes, it may not be possible to stop that vehicle and to avoid hitting the stationary vehicle or substance lying on the road. In such circumstances, attributing negligence or contributory negligence to the driver of moving vehicle in causing the accident will be very harsh conclusion.

In case of ***Jaspal Kaur and others Vs. Sach Khand Bricks Gram Udyog and others (supra)***, there was no evidence that the truck was parked on the metalled road. Keeping in view this fact, contributory negligence of the driver of the vehicle which hit stationary truck was held.

In case of *Lachhmi and others Vs. Ranjit Singh (supra)*, the facts of the case are not clear, as such, it cannot be made out as to under what circumstances, the driver of both the vehicles which met with accident were found to be equally responsible for the accident.

In case of *Subhash Chand and others Vs. Satya Rani and others (supra)*, the accident was not with a stationary vehicle, as such, the observations in that case has no impact on the facts and circumstances of this case.

In case of *Mewa Devi and Ors Vs. Ram Kumar and Ors 2016 (2) PLR 739*, this Court has observed that if a vehicle is parked on road without any indication, reflector, light, flag etc. fixed at the spot to indicate parking of vehicle on the road, there is no contributory negligence on the part of vehicle which came from behind and hit the stationary vehicle.

Keeping in view the facts of the case, observations of the Tribunal and the law on the point, I find no legal or factual infirmity in the award passed by the Tribunal, calling for any interference.

All the appeals have not merits.

Dismissed.

July 26, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No