

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.2450 of 1999 (O&M)

Date of decision : 15.03.2016

National Insurance Co. Ltd.

.....Appellant

Versus

Smt. Sunita Rani and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Ravinder Arora, Advocate with
Mr. Neeraj Khanna, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-National Insurance Company Limited (respondent No.3 in the claim petition) against the award dated 15.05.1999, passed by the learned Motor Accidents Claims Tribunal, Faridabad (hereinafter called the 'Tribunal') vide which respondents No.1 to 3-claimants have been awarded compensation to the tune of Rs.1,63,200/- on account of death of Khem Chand son of Mukand Lal in the motor vehicular accident, which took place on 22.11.1994.

2. The learned Tribunal has held the driver of Matador bearing registration No.HR-38-1624 and respondent No.4 the driver of truck bearing registration No.HR-38-4835 contributory negligent in equal shares for causing this accident. So, the appellant-Insurance Company was directed to pay 50% of the amount of the compensation, which comes to Rs.1,63,200/-.

3. Learned counsel for the appellant contended that there was no negligence on the part of the driver of the truck. The tyre of the truck had got punctured. The truck was parked on the side of the road and was in stationary condition but the Matador came from behind and struck in the standing truck. Even the criminal case has been registered on the statement of the driver of the truck. So, no negligence can be attributed to the driver of the truck. Consequently, he contended that the findings of the learned Tribunal qua contributory negligence are erroneous and the appellant is not liable to share the amount of compensation.

4. Notice of this appeal was issued to the respondents. They did not appear despite publication in the newspaper and were proceeded against *ex parte*.

5. As per the case of the claimants, on 22.11.1994 deceased Khem Chand loaded brass items from Muradabad for Faridabad in Matador bearing registration No.HR-38-1624. The deceased was sitting on the front passenger seat. When the Matador reached a little ahead of Gurudwara Bala Sahib, DESU Colony, red light near Inder Dharamkanta on the Ring Road, Delhi, after crossing the area of Sarai Kaley Khan Bus

Stand, the truck bearing registration No.HR-38-4835 was seen parked in the middle of the road without any parking lights or signal in stationary condition. The driver of the Matador considered the truck in moving condition and when he realised that the truck was stationary, hardly any time was left to apply the brakes. So, the Matador rammed into the truck, which resulted into fatal injuries to deceased Khem Chand.

6. So, this fact is not disputed that at the time of the accident truck bearing registration No.HR-38-4835 was in stationary condition. It has also been categorically pleaded by the claimants that the truck was parked in the middle of the road without any parking light or signal and due to that reason, the Matador rammed into the stationary truck from backside. Jang Bahadur Thapa respondent No.1 the driver of the truck has stepped into the witness box as PW2. In the cross-examination he has admitted that the truck was in the middle of the road. So, the plea raised by the learned counsel for the appellant that the truck was parked on the side of the road stands countered by the statement of Jang Bahadur Thapa, the driver of the truck, who has categorically stated that the truck was parked in the middle of the road. PW2 has not deposed anywhere that he has taken any precaution to make aware the traffic moving on the road with respect to the parking of the truck in the middle of the road. There was a fog at the time of the accident. The truck was parked in the middle of the road without any parking light or any other signal, which clearly establishes the negligent act on the part of the driver of the truck. Thus, no fault can be found with the findings of the Tribunal holding the driver

of the truck to be contributory negligent.

7. Consequently, the present appeal has no merits and the same is hereby dismissed.

15.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**