IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6476 of 2012 (O&M)
Date of Decision: April 18, 2017

United India Insurance Co. Ltd.

..Appellant(s)

Versus

Manjit Kaur and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. D.D. Gupta, Advocate
for the appellant.

Mr. Navdeep Chabra, Advocate
for respondents no.1 to 3.

Mr. H.S. Aujla, Advocate for
Mr. N.S. Dandiwal, Advocate
for respondent nos.4 to 7.

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ANITA CHAUDHRY, J.

This appeal has been filed by the insurance company disputing the liability placed upon them by the Motor Accident Claims Tribunal, Sri Muktsar Sahib, vide award dated 17.08.2012.

The facts are necessary to understand the context. Nirbhai Singh took a lift in a car bearing registration no.DL3CC-3399, which was driven by Surjit Singh. Sukhminder Singh, brother of Nirbhai Singh was also accompanying them. The claimants plea was that Surjit Singh was driving the car in a very rash and negligent manner and when they were near the Gurudwara of village Killianwali at 6:30 PM on 02.11.2007, the car rammed into a stationary truck, which resulted in multiple injuries leading to the death of Nirbhai Singh. Surjit Singh, the driver of their car fled from the spot. Nirbhai Singh died three days later in a hospital and on the same day FIR was registered against Surjit Singh, driver of the car.

The claim petition was filed against the owner, driver and the insurer of both the vehicles but it was claimed that the accident was result of the rash and negligent driving of Surjit Singh driver of the car. A prayer, however, was made that the owner, driver and insurer of both the vehicles were jointly and severally liable to pay the compensation.

Sukhminder Singh, brother of the deceased stepped into the witness box and claimed that Surjit Singh was driving the car rashly and negligently and he stopped him but Surjit Singh did not pay any head and the accident occurred on account of negligent driving by Surjit. In the cross-examination he revealed that the truck driver had got down to deposit the toll tax and that the truck was on the left side of the road.

The Tribunal assessed the compensation and apportioned the amount placing the liability of payment of half of the amount by the owner and driver of the car and the remaining 50% to be paid by the insurer of the truck.

The insurance company has disputed its liability on the plea that there was no allegation that the truck driver was at fault nor there was any evidence or suggestion that the truck was parked wrongly or in the middle of the road and the liability could not be placed on them.

I have heard both the sides.

The counsel for the appellant-insurance company has urged that the perusal of the claim petition as well as the affidavit would show that there is not even a whisper from the side of the claimants that the truck driver was at fault or that it was parked without any indicator or in the middle of the road and therefore, the liability could not have been placed upon them and the Tribunal had wrongly placed the liability to the extent of 50% on them by merely referring to the regulations of 1989. It was urged that there was no suggestion even to the truck driver that the vehicle was parked without any indicator and the truck driver could not held to be in the wrong.

On the other hand, the submission on behalf of the claimant and LRs of the driver and owner are that the accident had taken place in the month of November and it was dark at 6:30 PM and the truck was parked on the road without any indicator and the truck driver was at fault and the liability was rightly placed upon both the vehicles.

The accident has taken place near a toll barrier. The car was driven by Surjit who died during the pendency of the claim petition and therefore could not step into the witness box. It has come in evidence that Surjit after causing the accident ran away from the spot.

The eye-witness to the incident had referred to the fact that the truck was stationary and was parked on the left side and the allegations were that car driver was at fault. No negligence was attributed to the driver of the truck. The Tribunal had placed the liability on both the vehicles. It is true that the eye-witness to the incident did not disclose as to whether the back-lights of the truck were on or otherwise. The statement is totally silent. It is also not in dispute that the truck driver had got down to pay the toll tax at the octroi barrier. The accident had occurred at a time when it was dark. The driver could not have left the vehicle to remain stationary without the parking lights on. It has come in evidence that the truck was not parked in the middle of the road but was on the side. The evidence is however not clear whether it was on the Kacha portion. There is no evidence from the side of the car driver as Surjit had died during the pendency of the trial. His version is not available. From the allegations and the evidence it can surely be said that it was the car driver who was mainly at fault as he struck a stationary vehicle from behind. The speed of the car would have been very high, therefore, it led to this crash but I find that the driver of the truck had also contributed. Had the truck been on the Kacha portion, the impact would have been lesser or would not have led to the accident. It is understandable that near the octroi of the toll barrier, there would be several other vehicles parked there, one after the other and the car driver should have been conscious and should have slowed down and the major fault lay with the car driver. However, I would assume that the truck driver had also partly contributed and I would reduce their liability from 50% to 25%. Liability of 75% would be that of the car driver.

With the above modification, the appeal is disposed of.

(ANITA CHAUDHRY)
JUDGE

April 18, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No