

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

FAO No.4978 of 2012

Date of Decision: 18.09.2018

Reliance General Insurance Company Ltd.

...Appellant

Versus

Geeta Devi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Arun Sharma, Advocate
for the appellant.

Mr. Abhishek Yadav, Advocate
for respondent Nos.1 and 2.

Mr. Arvind Galav, Advocate
for respondent Nos.3 and 4.

Mr. J.P. Sharma, Advocate
for respondent Nos.5 and 6.

B.S.WALIA, J (Oral).

1. Appeal has been filed by the Insurance Company on the ground that compensation of ₹11,67,000/- awarded to the respondents-claimants on account of death of Ashok Kumar in a motor vehicular accident on 28.01.2018, was liable to be reduced by 50% on the ground of contributory negligence but the plea of contributory negligence had been wrongly rejected by the learned Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal').

2. The point in issue is as to whether the deceased was liable for contributory negligence resulting in accident and as a consequence thereof the compensation payable was liable to be reduced proportionately.

3. Learned counsel for the appellant has referred to paragraph No.9 of the impugned award qua plea of contributory negligence and contended that PW-2, eye-witness, in his cross-examination admitted that at the time of accident there was no traffic on the road and the truck body was stationary, half on the road and half on the kacha berm/portion. He further stated that no other vehicle was coming from the opposite side. On the basis of the same, learned counsel contended that once two vehicles could pass at the same time on the road, striking of the motorcycle of the deceased in a stationary vehicle amounted to contributory negligence.

4. Per contra, learned counsel for the respondents-claimants vehemently contended that plea of contributory negligence was without any basis as the accident took place on the highway on a cold winter night at about 09:00 p.m. Learned counsel further contended that the area where the accident took place has mist/fog during the entire winter. Despite opportunity to learned counsel for the appellant, the aforementioned plea was not refuted. Be that as it may, the fact remains that the truck against which the motorcycle rammed was parked without any indicator.

5. I have heard learned counsel for the parties.

6. In the absence of any indicator to indicate the presence of a truck half on the road and half on the kacha portion abutting the road, a person driving his vehicle on the correct side of the road as per rules would

ram into the truck which was parked without any indication on a cold winter night at 9:00 p.m. and that is precisely what happened in this case.

7. As per notification dated 09.06.1988, issued by the Central Government under the Motor Vehicles Act, maximum speed limit of two wheelers has been prescribed as 50 kilometers per hour. Obviously a person driving a vehicle at a speed limit of 50 kilometers per hour if was to strike against a stationary truck would end up with horrendous consequences and even possibly meet with a fatal end as happened in the instant case. Besides the learned Tribunal rightly took into account that a person going on a highway cannot visualize that a vehicle would be parked partly on the road at night time without any indicator. Under Section 122 of the Motor Vehicles Act, 1988, no person in charge of a vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as causes or is likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. In the instant case, the offending vehicle was parked by respondent No.1 on National Highway No.8, though the aforementioned road came to be designated as National Highway only after the occurrence of the accident and that too in the year 2014. Earlier it was a State Highway. In the absence of putting any signal or indicator to show presence of a vehicle parked partly on the road was obviously the reason which led to the accident. The aforementioned view finds support from a decision of Hon'ble the Gujarat High Court in the case of Saudagarsingh Chhajusingh and others vs. Jashodaben and another-II 1985, ACC 2130.

8. In the circumstances, I am satisfied that the accident in question resulting in the death of Ashok Kumar (as also Maru Ram) occurred as a result of the negligence attributable to respondent No.5 (respondent No.1 before the learned Tribunal) only by wrongly parking the truck partly on the highway without any indication in respect thereto. Accordingly, I find no merit in the plea of the appellant of there being any contributory negligence.

9. In view of the position as noted above, I do not find any merit in the appeal. Accordingly, the same is dismissed.

(B.S.WALIA)
JUDGE

18.09.2018.
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No