

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

F.A.O No. 957 of 2014

Date of decision:- 23.07.2019

United India Insurance Co. Ltd.

...Appellant

Versus

Manoj Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.K. Dogra, Advocate
for the appellant

Mr. Harsh Chopra, Advocate
for respondent No. 1

Mr. Sukhtej Singh, Advocate for Mr. Atul Rana, Advocate
for respondent Nos. 2 and 3.

RITU BAHRI J.

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Narnaul (for brevity, the tribunal'), vide its award/order dated 03.10.2013 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.52,23,527/-.

Facts not in dispute

On 09.07.2010, respondent No. 1-Manoj Kumar was coming to village Sohla by sitting in car bearing registration No. HR36C-6179 owned by Lakhjeet Singh, who was driving the car. Respondent No. 1 was sitting with driver and on rear seat, Chander Bhan and Sapna daughter of Daya Ram were sitting. At about 9 P.M, when they crossed Khatodra towards Satnali, the car hit against the dampher truck bearing registration No. HR45-A1862 which was parked in the middle of the road without any indication like stones, branches of trees etc. The dampher was stationery and Lakhjeet

Singh applied his break but cut hit the stationery dampher truck. As a result of which all the occupants of the car received injuries. Chander Bhan succumbed to his injuries while on the way to hospital. Respondent No. 1 was referred to some other hospital after considering his critical condition. F.I.R NO. 242 dated 10.07.2010 under Sections 283/337/338/304-A IPC was registered at P.S. Mahendergarh.

The learned Tribunal after going through the entire evidence held that the accident had occurred due to negligency of Rajender Singh (driver of offending dampher) and awarded compensation of 52,23,527- on account of 100% disability of respondent No. 1

Learned counsel for the appellant has argued that the tribunal gave a wrong finding by holding the entire negligence of the truck driver. It is a case of contributory negligence. It was the duty of the driver of the car to be more careful while driving the car. It has further been argued that the compensation awarded by the Tribunal is on the higher side.

The argument of learned counsel for the appellant is liable to be rejected as the appellant has not led any evidence to show that the dampher was not standing on the middle of the road. The appellant has not produced any site plan to show that dampher was not standing on the middle of the road. In the absence of any direct evidence, the Tribunal has rightly held Insurance Company liable to pay the compensation. Before the tribunal, the claimants have also placed on record the certified copy of award dated 13.12.2011 passed in claim petition No. 76-2010 in case titled as Anil and another vs. Rajender and another passed by learned Motor Accidents Claim Tribunal, Jhajjar arising out of same accident. This award/order has not been challenged by the Insurance Company and has thus attained finality.

Reference at this stage can be made to cross examination of P.W.3-Lakhjeet Singh whose testimony could not be shaken. He stated that the dampher was standing in such a dangerous manner on the middle of the road without taking any precautions or without any indication.

This appeal is liable to be dismissed as it stands proved on record that the offending vehicle was standing on the middle of the road without any indicator and it was 9 P.M when the accident occurred, so it was the duty of the driver of the offending truck to give some indication that the truck was standing on the middle of the road. The driver of the car had no time to react.

Reference at this stage can be made to a judgment of this Court in a case of *The Oriental Insurance Co. Ltd vs. Harshpreet Kaur and others, 2016 (4) RCR (Civil) 362* wherein the truck was parked in the middle of the road without putting on back lights, reflectors, indictors and it was held that it was solely the negligence of the driver of the offending vehicle who had left the same in the middle of the road without any indication.

Reference at this stage can further be made to judgment of Hon'ble the Supreme Court of India in a case of *Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer and another, 2003 (4) RCR (Civil) 764* wherein in para 6,it has been observed as under:-

“What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would

be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff.

Applying the ratio of the above mentioned judgments to the facts of the present case, the appeal stands dismissed being devoid of any merit

23.07.2019

G Arora

**(RITU BAHRI)
JUDGE**