
(1986) 01 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 36 of 1982 and X Objection 16 CII of 1982

Mukhtiar Singh and Other

APPELLANT

Vs

Smt. Krishna Gulati and Others

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 81

Citation : (1986) 01 P&H CK 0007

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : T.S. Sangha, for the Appellant; R.M. Suri for Mr. Y.P. Gandhi for Respondents Nos. 1 to 3 and Mr. V.P. Gandhi for Respondent No. 6., for the Respondent

Judgement

M.M. Punchhi, J.—A taxi ran into a stationary truck on National Highway No. 1 between Delhi and Palwal around 3 am. on 12th May, 1979. One of the inmates of the taxi, Sat Pal Gulati, died on account of the accident His widow Smt. Krishna Gulati and his two minor daughters, Miss Mena and Miss Sona, preferred a claim to the tune of Rs. 1,60,,000/- before the Motor Accident Claims Tribunal, Gurgaon. The Tribunal held the stationary truck to be responsible for the accident The Tribunal further held that the annual dependency of the claimants over the deceased was to the tune of Rs. 4,840/- and given a multiplier of 13, were held entitled to a rounded figure of Rs. 60,000/- Additionally, interest at the rate of 6 percent per annum was allowed from the date of the application till recovery of the awarded amount. The liability was apportioned to the tune of Rs. 50,000/ on the National Insurance Company, the insurer of the truck, and remaining Rs. 10,000/- was put on the shoulders of the owner/truck driver. F.A.O Nos 36 and 50 of 1982 have been filed by the aforesaid Insurance Company and the truck driver/owner and Cross/Objections No. 16-CII and 17.CII of 1982 have been filed by the claimants for enhancement of compensation.

2. Some of the undisputed facts are that taxi No DLY-750 driven by Daya Nand

Respondent was returning from Agra to Delhi on the night intervening 11/12th May, 1979. The occupants of the hind seat of the taxi were Pritam Siagh PW 4 and Radhey Mohan Gupta PW-5. On the front seat was the driver on the wheel and besides him was Sat Pal Gulati deceased. At about 11 miles from Palwal, the car, Ambassador by make, was suddenly confronted with a parked truck and in order to save a collision the driver swerved it towards his right. Yet the right hind portion of the truck hit the front left portion of the car which resulted in the instantaneous death of Sat Pal Gulati. According to Daya Nand driver RW-2as also Pritam Singh PW-4 and Radhey Mohan Gupta PW-5, the truck was standing on the metalled portion of the road but on the left side. All these were unanimous that the driver of the car could only spot the truck in that split of the moment when he had to swerve towards the right to avoid a collision, if possible. The case of the truck driver, on the other hand, as put in his written statement, is that the truck had been parked on the road side towards left, but in his statement as RW-2 he clarified his stance by asserting that two wheels of the truck were on the middle portion and the other two wheels were on the unmetalled portion of the road. It stands undisputed before me that the truck driver had parked hit truck in order to ease himself and besides this there was no other compulsive need which could have involved any longer time for him to keep it stationary. It equally stands undisputed before me that the learned Tribunal was right in concluding that the truck driver, after the accident, had driven hit truck away before the arrival of the police. Additionally, the existence of photographs Exhibits P-2 and P-3, as produced by the claimants, is not disputed. It is on these circumstances and material that liability of the truck needs re-determination in the context of the appeal and the cross-objections.

3. Picking up thread from the afore-narrated facts, it has also come to light in the evidence of Daya Nand RW 2 that before the time of the accident there were a number of on-coming vehicles which were glaring their lights and in the glare he could not perceive the parked truck till the necessity arose to swerve the car towards its right. Accepting that statement as correct, there enters an inherent negligence in his stance. Those who drive vehicles at night know well that if the on-coming vehicles have light on without the use of dippers it is safe and prudent on one's part to put on the dipper to obviate the possibility of a collision with a stationary vehicles or an obstruction, it is not the claim of Daya Nand RW-2 or for that matter of Pritam Singh PW-4 and Radhey Mohan Gupta PW-5, that the driver (Daya Nand) used the dipper in order to increase perception and to minimise the ill effect of the glare of the on-coming vehicles. Had he done so, he would have obviously spotted the truck causing obstruction on the road and steered a passage to cross by in a cautious way. To this extent my view is that the driver of the taxi was negligent. He did not exercise the necessary caution in using his dipper, keeping apart the negligence of the truck.

4. Now on the question of negligence of the truck, Section 81 of the Motor Vehicles Act is a clear pointer, which reads:

81. Leaving Vehicle in Dangerous Position-

No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

It is settled by the Supreme Court in *Rakesh Kaushik v. Delhi Administration* A. I. R. 1985 S. C. 1050, that titles to sections are a legislative exercise and by no means words of no significance. The key to the section is-"Leaving vehicle in dangerous position." In the context of the present set of facts, hint of which has been made earlier, there was no other need with the truck driver to stop the truck except to case himself, an act which could not be accomplished in no time. A driver, more so a truck driver, whose life is wedded to the wheels, knows the requirement of the law and the dictates of his professional prudence. According to his statement, he had parked the truck 20/30 minutes before the accident. Though his claim is that the parking lights were on but had they been on, there was no likelihood of the accident taking place in the manner in which it has happened. Secondly, the accident by itself could not have switched off the parking lights and he could have waited for the police to arrive to tell them that the accident had taken place despite the parking lights being on. The very fact that he vanished from the scene shows that his mind was guilty. He was even prosecuted and found guilty by the criminal Court. There is no support whatsoever from any quarter to his version that the parking lights of the truck were on or there were any reflectors to otherwise caution the ill-fated taxi driver. Thus, it is crystal clear that the parked truck could not have been seen by the taxi driver as the truck driver had not taken any caution in that regard to make his parked vehicle visible or discernible. As said earlier, that by itself did not" absolve the taxi driver to keep a vigilant eye for any obstruction in his front.

5. Now reverting to Section 81 of the Motor Vehicles Act, the emphasis is on "leaving vehicle in dangerous position" or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road. The section is applicable to all vehicular traffic whether in the day time or at night time. The care and caution, however, at night time is obviously more than in day time. The section does not take into account the measure of obstruction. The only guideline provided in the section is that the position or condition of the vehicle must be likely to cause danger or there should be undue inconvenience to other users of the road. The effort of the truck driver to say that his truck was parked partly on the middle portion and the other on the unmetalled portion of the road, would in no case by itself whittle down the requirement of Section 81. The fact remains that on night time, without its parking lights being on, it was parked in a dangerous position and the obstruction which it caused, was bound to cause undue inconvenience to even vigilant users of the road and to the unvigilant ones there was a high degree of probability to be engaged in an accident, which it did in the present case. Thus, it

is my considered view that the truck driver was negligent in leaving his truck in a dangerous position, a course prohibited u/s 81 of the Motor Vehicles Act and per se on that ground must be held to be liable for negligence.

6. Now we have two negligences of the respective drivers inter-gripped with each other. On the one hand, there is the concept of "composite negligence" and on the other of "contributory negligence". Whereas in the case of composite negligence, both the tortfeasors are liable to compensate the victims for the loss suffered and those are entitled to recover the loss from one or the other, in the case of contributory negligence the right of recovery is foisted as per the apportionment made by the Court on the sum awarded. In the former position, when it is a case of composite negligence and one tortfeasor has been made to pay the compensation, he can rateably ask for compensation from the other tortfeasor, but then again the Court is required to apportion the negligence inter se to reimburse the tortfeasor who compensated the claimants. Though there has been an effort by Mr. Gandhi, learned Counsel for the insurer of the car, that the truck alone was responsible for causing the accident, which effort has obviously failed, his alternate argument is that this is a case of composite negligence and not of contributory negligence. The argument, though attractive on its face value, would not be attracted to the present set of facts when it has been found that the truck driver was primarily negligent in causing obstruction to the road by parking it wholly or partially on the metalled portion of the road without taking adequate precautions to have the obstruction noticed and perceived by the oncoming vehicles. The taxi driver was secondarily negligent in not using the dipper and had he done so, he could perhaps have avoided the accident despite the wrong parking of the truck. In this way, I have come to the view that this is a case of contributory negligence. Having regard to the initial negligence of the truck driver and subsequent negligence of the taxi driver before the accident, I would apportion their liability at 75 percent and 25 per cent respectively, as was done in somewhat similar circumstances by Harbans Lal, J in *Oriental Fire and General Insurance Co. Ltd. and Others Vs. Deep Kaur and Others*, That of course was a case in which the truck was stationary on the metalled portion of the road and the car had collided in such a way to get smashed underneath.

7. The annual dependency of the claimants at the rate of Rs. 4,840/- has not been disputed before me. The deceased was engaged in business of transport and his income was discernible from the income tax returns filed by him. He was in the prime of his life being 40 years of age. His growing children had expectancies of him which could not dwindle down in just 13 years. I find no rationale why the Tribunal awarded a multiplier of 13 in the instant case. The normal multiplier of 16 should have been applied. I do so now. Multiplying the sum of Rs. 4,840/- with 16, the total comes to Rs. 77,440/-, which I will round up to Rs. 78,000/-. On that sum the claimants would be entitled to 10 percent interest per annum from the date of application till the date of payment as that is the only interest claimed by them in the Cross Objections.

8 Having arrived at the above figure and the apportioned percentage of liability, it still remains to fix liabilities on the Insurance Company, the insurer of the truck, is held liable to pay Rs. 58,500/-. There is no plea taken in the pleadings of the Insurance Company that there was any limited liability of Rs. 50,000/-, as known under the Act. It is the certificate of insurance alone which could have given out the clear picture. On the absence thereof, the entire liability of the truck owner has to be fixed on the National Insurance Company, one of the Appellants Regarding remaining Rs. 19,500/- the liability primarily being that of Messrs International Tourist Corporation Respondent the owner of the taxi, and their driver Daya Nand, indemnification to the tune of Rs. 10,000/ would be provided by Messrs Oriental Fire and General Insurance Company- Respondent, the insurer of the taxi, as per the policy Exhibit R1 placed on record. To this extent, the cross objections stand allowed and the relief moulded accordingly in the appeals.

9. The appeals and the cross-objections are decided in the manner as stated above. No costs.