

(2006) 04 RAJ CK 0057
In the Rajasthan High Court

National Insurance Company Ltd.

APPELLANT

Vs

Mrs. Sunita Yadav and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Citation : (2006) 3 ACC 510 : (2008) ACJ 745

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The appellant, Insurance Company, has challenged the award dated 15.10.2005 passed by the Motor Accident Claims Tribunal, Kotputali, District Jaipur (Raj.) whereby the learned Tribunal has awarded a compensation of Rs. 80,538 to Mrs. Sunita Yadav, the claimant, for the injuries sustained by her in an accident.

2. The brief facts of the case are that on 18.2.2001 Mrs. Sunita Yadav was travelling in a jeep, bearing Registration No. RJ-14/C-6855 along with other persons, for attending a marriage. Around 7.30 p.m. while the jeep was moving at a moderate speed, a truck bearing Registration No. D1 -1G B-4299, was standing on the left side of the road outside a "Dhaba". Although it was night, the truck neither had any indicator, nor any reflector on to let the drivers coming from behind know that the truck was parked on the road. Since the driver of the jeep did not see the parked truck, it collided with the truck. Resultantly, four persons died and others, like the respondent No. 1, sustained injuries. Since the respondent No. 1 had suffered injuries on her hand, head, feet and face, she filed a claim petition before the learned Tribunal. The driver and the owner of the truck did not appear before the learned Tribunal. Only the Insurance Company contested the claim petition. As mentioned above, a total of four persons had died and others sustained injuries. In all, six claim petitions were filed by different claimants before the learned Tribunal. The learned Tribunal passed a common award dated 15.10.2005. As stated above, the learned Tribunal directed that the respondent No. 1 should be paid Rs. 80,538 along with interest @ 6%

per annum for the injury sustained by her. Hence, this appeal by the appellant, Insurance Company, before us.

3. Mr. Vizzy Agarwal, the learned Counsel for the appellant, has raised two contentions before us: firstly, that it is not a case of negligence solely on the part of the truck driver. According to the FIR lodged immediately after the accident, the accident had occurred because of the negligence of the jeep driver. In order to substantiate his arguments, the learned Counsel for the appellant submitted a copy of the site plan showing the place of the occurrence. According to the learned Counsel, the truck was parked on the correct side of the road and according to one of the witnesses, the parked truck was clearly visible. Since it is the jeep driver who collided with a stationary truck, clearly the negligence of the jeep driver is made out. However, as the jeep driver had also expired in the same accident, eventually the police had submitted a negative final report. Hence, according to the learned Counsel, it is a case of contributory negligence. Therefore, the Insurance Company of the truck cannot be held solely liable for the payment of compensation. Secondly, that since the respondent No. 1 had not arrayed the owner and the Insurance Company of the jeep as non-claimant respondents, the Insurance Company of the truck cannot be directed to pay the entire amount of the compensation.

4. We have heard the learned Counsel for the appellant, Insurance Company, and have perused the impugned award.

5. Admittedly, the occurrence took place in February, a winter month, when the sun sets early and the night begins. Admittedly, the alleged accident took place at about 7.30 p.m. in the night. According to the site plan, the truck was parked in front of a "Dhaba", which had sufficient land for parking of the truck. But even then, the truck driver chose not to park the truck in the land between the "Dhaba" and the road, but chose to park the truck on the left hand side of the road. According to the witnesses, the truck had no reflectors, blinkers, indicators or even a line of stones around it to clearly indicate its stationary position to the vehicles, which were moving behind it. The truck driver while parking the truck in such a haphazard manner owed a duty to the public at large to indicate that the truck had been parked on the road itself. Even assuming that the truck was parked on an emergency basis, the driver was required to give some indication to the public by turning on the indicators, stop lights or by placing stones around the truck, that the truck was stationary and not moving. None of these precautions were taken by the truck driver. Hence, the truck driver was clearly negligent in parking the truck on the road itself.

6. According to the witnesses, the jeep driver was driving the jeep at a moderate speed. Just after the twilight, in the beginning of the nightfall, the jeep driver might have presumed that the truck was also moving as there was no indication that the truck was parked. Merely because one of the passengers stated that he realized that the truck was stationary, such an awareness cannot be imputed to the jeep driver. Hence, it is difficult to conclude that the jeep driver was negligent

when the jeep collided with the stationary truck. Thus, the first contention raised by the learned Counsel for the appellant does not have any force. Since the negligence was solely on the part of the truck driver, there was no necessity for the respondent No. 1 to array the owner and the Insurance Company of the jeep as a party-respondents in the claim petition. Therefore, the second contention of the learned Counsel for the appellant also fails.

7. According to Ex. 33, injury Report of respondent No. 1, she had sustained two injuries on her face. According to Ex. 34, X-ray Report, the mandible bone was fractured. According to the Ex. 35, the operation notes, respondent No. 1 had undergone an operation for wiring up the mandible bone. According to the Ex. 36, she has sustained 7.5% permanent disability. Considering the fact that the respondent No. 1 was a young lady of 30 years, considering the fact that her mandible bone was injured and her face was also injured, a compensation of Rs. 80,358 is just and reasonable.

8. In the result, we do not find any force in this appeal. It is, hereby, dismissed.