
(2011) 11 SHI CK 0332
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No. 19 of 2010

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Usha Devi and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 1 ACC 84 : (2013) ACJ 1646 : (2012) 1 ShimLC 182 : (2012) 2 TAC 853

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal by the Insurance Company is directed against the award dated 20.8.2009 passed by the learned Motor Accident Claims Tribunal-II, Solan, in MAC Petition No. 37-S/2 of 2008. Briefly stated the facts of the case are that the deceased Kulbhushan Sharma was owner of Mahindra Pick-up bearing registration No.HP-13-2339. Admittedly, this vehicle struck a trailer (long truck) which was parked on the side of the road. The accident took place at about 11. p.m. and according to the claimants the trailer bearing registration No.PB-12-B-5383 was parked on the wrong side of the road and neither any parking nor warning lights were switched on and therefore the negligence was that of the driver itself. The claimants who are the widow, minor children and mother of the deceased filed the claim petition u/s 166 of the Motor Vehicles Act claiming compensation. This petition was allowed by the learned Tribunal who awarded compensation of Rs. 18,50,000/- in favour of the claimants. Hence, the present appeal.

2. It is not disputed that the accident took place. It is also not disputed that the trailer was parked on the wrong side of the road. There is a sufficient material on record to show that neither any parking lights had been switched on nor any other indicator or warning lights had been switched on to warn the motorists that

the vehicle was parked on the road.

3. It is contended by Sh. Ashwani Sharma that even if these facts are accepted to be correct the deceased himself, who was driving the vehicle No.HP-13-2339, was guilty of contributory negligence. According to Mr. Sharma even at night if the deceased had switched on head lights of his motor vehicle he would have seen the parked trailer from a long distance and could have avoided the accident.

4. Every motorist, who drives a vehicle, owes a duty to take care and must ensure that he drives in such a manner which is safe and in accordance with the Motor Vehicle Rules. Parking of a vehicle on the side of the road without keeping the parking lights on is no doubt a negligent act. At night time, when vehicles on the main highways are being driven at high speed, the negligence is even greater. However, at the same time any motorist driving the vehicle would become aware that a vehicle is parked in a wrong manner, if the motorist himself is driving the vehicle carefully and with the lights on. If the headlights of the car are on, from a long distance one can make out that some vehicle is wrongly parked without lights. It is not only vehicles which are parked on the roads but at night there can be pedestrians, cyclists and bullock carts on the road none of which have parking lights. Therefore, every motorist also must ensure that he drives the vehicle in such a manner that accidents are prevented.

5. Keeping in view the aforesaid discussion, I am of the considered opinion that in the present case though the driver of the trailer was negligent inasmuch as the vehicle was wrongly parked without any lights being switched on, the deceased himself had also contributed to the accident because if he had been driving carefully he could have avoided the accident.

6. While taking this view, I draw support from the judgment of the Apex Court in *Raj Rani and Others Vs. Oriental Insurance Co. Ltd. and Others*, . In that case, the truck was parked in the middle of the road without any lights and the car being driven by the deceased hit the truck as the driver of the car was blinded since some other vehicle coming from the other side had its headlights on. The Apex Court upheld the finding of the High Court that the drivers of both the vehicles were equally negligent in the vehicle. The said judgment squarely applies to the facts of the present case and therefore both the driver of the trailer and the deceased were equally responsible for the accident.

7. Coming to the issue of quantum, the learned Tribunal took the income of the deceased at Rs. 15,000/- per month. In my view, this assessment is reasonable and the dependency of Rs. 10,000/- per month is also reasonable. The deceased was aged 37 years and therefore the multiplier of 15 is applicable as per the judgment of the Apex Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, Therefore, the compensation works out to Rs. 18,00,000/- on account of the loss of dependency. Since the deceased himself was guilty of contributory negligence to the extent of 50%, the claimants shall be entitled to Rs. 9,00,000/- on account of loss of dependency. The widow is

awarded Rs. 30,000/- for loss of consortium and another sum of Rs. 10,000/- for funeral expenses and Rs. 10,000/- as conventional damages. Therefore, the total amount payable works out to Rs. 9,50,000/-. On this amount, the claimants shall be entitled to interest @ 9% p.a. from the date of filing of the claim petition till payment thereof. The claimants shall also be entitled to costs which are assessed at Rs. 10,000/- for the proceedings throughout. The appeal is partly allowed and the award passed by the learned Tribunal is accordingly modified.