

(1985) 01 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 24 of 1981

New India Assurance Co. Ltd.

APPELLANT

Vs

Surinder Kaur and Others

RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:

Citation : (1987) ACJ 462

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : L.M. Suri and Ravinder Arora, for the Appellant; V.P. Gandhi and Harnam Singh Bhullar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—Rup Singh, the car driver and Gurcharan Singh, one of the persons travelling in the car CH 3838, were killed when this car met with an accident with the truck PUR 2272. This happened on March 31, 1977 at about 10.30 p.m. on the two lane road between Sectors 16 and 17, Chandigarh. The car had come on to this road from Sector 17 while the truck came there from the side of the Secretariat, that is, from the right of the car. It was the finding of the Tribunal that this was a case of contributory negligence with both the car driver as also the truck driver being equally to blame. The compensation payable to the claimants in the case of car driver, Rup Singh, they being his father and daughter, was consequently reduced to half of what they would otherwise have been entitled to, the amount awarded being Rs. 24,000/-. For the same reason, only Rs. 5,486/- were awarded to the car owner Surjit Singh for the damage to the car. There was, of course, no such reduction in the case of Gurcharan Singh deceased. The claimants there, namely, his mother, widow and three minor children were awarded Rs. 72,000/-.

2. In appeal now, Mr. Harnam Singh Bhullar, counsel for the claimants, sought to contend that there was no contributory negligence on the part of the car driver. The argument being that as the car had already entered the two-lane road, the

truck driver was wholly at fault in letting the truck hit into it. This is indeed an untenable contention. The truck was on the main road, on its correct side and also coming from the right of the car and thus had precedence in the right of way. On the other hand, it was incumbent upon the car driver to ensure that the road was clear and that he could enter it without endangering the safety of any road user. If indeed such care and caution had been exercised, this unfortunate accident would undoubtedly not have occurred. In this situation, it could perhaps even be argued that the fault lay entirely with the car driver. Be that as it may, the claimants cannot possibly avoid the finding of contributory negligence. This being so, there is no warrant for awarding enhanced compensation to the claimants. The Tribunal, however, fell in error in awarding interest on the amount awarded at only 6 per cent. This interest is accordingly hereby enhanced to 12 per cent from the date of the application to the date of the payment of the amount awarded.

3. The New India Assurance Company, on its part, sought to challenge the compensation awarded to the claimants on the plea that it was far in excess of what they were in fact entitled to. No such plea is, however, open to the insurance company and consequently, the amount awarded to the claimants is not open to challenge.

4. In the result, the appeals filed by the claimants are accepted to the extent indicated above, while those filed by the New India Assurance Company are hereby dismissed with costs. Counsel's fee Rs. 500/-.