

(1995) 05 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 48 of 1987

Rashmi Chhabra and Others

APPELLANT

Vs

Shri Vijay Kaur Ahuja and Others

RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1995) 2 ACC 555 : (1996) ACJ 622 : (1995) 111 PLR 70

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : C.B. Goel and Rajinder Goel, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This appeal is directed against the award of the Motor Accident Claims Tribunal, Karnal, which had dismissed the claim petition filed by the claimants u/s 110-A of the Motor Vehicles Act, by holding that the claimants are not entitled to the compensation as the negligence of the driver of the offending vehicle has not been proved. In the appeal, the question for consideration is whether the accident had occurred due to negligent act of driver of offending vehicle No. HYR-5417.

2. The case of the appellants as set up in this appeal is that on 16.4.1995 Balwinder Singh since deceased was going towards Karnal from Delhi in Matador No. HYK-2617 which was being driven at a speed of 40 Kilometers per hour on its left side. Balwinder Singh was sitting on the left side of driver Gurmit Singh. The truck No. HYR-5417 was parked in the middle of the road without any parking lights, indicator or any sort of precaution, which could fore-tell the incoming traffic that some vehicle had gone out of order and standing in the middle of the road. The left portion of the matador struck against the right portion of truck and due to the impact. Balwinder Singh was crushed and he died at the spot. According to the claimants, the accident had taken place due to the negligence of

the driver of the truck. It is the further case of the appellants that the deceased was aged about 24-25 years at the time of accident. He was running transport business and was dealing in many types of other business thereby earning Rs. 2500/- 3000/- per month. The claimants further pleaded that they were fully dependent upon the deceased and as such" were entitled to the compensation of Rs. 5,00,000/-.

3. On the other hand, respondent No. 1 and 2 contended that the accident took place due to the negligence of the driver of the matador and as such the claimants were not entitled to any compensation.

4. The Tribunal on the basis of pleadings of the parties, framed the following issues:-

1. Whether the accident on 16.4.1985 at about 1.30 P.M. within the jurisdiction of Police Station, Samalakha had taken place due to rash and negligent act of Shri Rajinder respondent No. 2 driver of truck No. HYR-5417? OPP.

2. If issue No. 1 is proved, whether the petitioners are entitled to compensation, if so, from whom and to what amount? OPP.

3. Whether the petition is within time? OPP.

4. Whether the claim petition is prolix, argumentative and full of illegal matters and as such the same is liable to be rejected? OPP.

5. Relief.

5. In the case in hand the involvement of the offending vehicle and the death of the deceased are not disputed. The question cropped up for consideration is whether the accident was caused due to negligent act of the truck driver bearing No. HYR-5417.

6. In order to come to the conclusion, it will be worthwhile to scrutinise the evidence brought on record. Gurmit Singh PW-5 had stated that truck bearing No. HYR-5417 was standing in the middle of the road and there was neither parking light nor there was any sort of indication to show that some vehicle was standing in the middle of the road. It has come in his statement that left portion of the matador struck against the right rear portion of the truck and due to impact, Balwinder Singh received injuries and died at the spot. The testimony of this witness is duly proved by the photographs Ex P-2 which was taken at the spot in which the dead body of Balwinder Singh has been shown to be lying on the road and Ex P.3 shows that left portion of matador was badly damaged. The accident had occurred on 16.4.1985 at 1.30 A.M. The possibility of switching on the lights of the offending vehicle at that stage cannot be ruled out. In view of this and the photographs taken at the spot, which were exhibited truck No. HYR-5417 was almost parked the middle of the road and the matador No. HYR 2617 had struck against the rear portion of the truck. There can be no doubt that by parking the truck in the middle of the road, the driver of the truck had caused

obstacle in the smooth running of the traffic.

7. The question which now requires consideration is whether any fault can be attributed to the driver of the matador No. HYR 2617. It appears that the drivers of matador did not take appropriate precautions. A duty was cast upon the driver of the truck to switch on the parking lights while parking the vehicle. In the same manner, had the driver of the matador slowed down the vehicle the accident would have been averted.

8. In the case of Chop Seng Heng v. Thervannasan 1976 A.C.J. 275, a lorry was parked near the blind corner with its lights on as it was dark. The second lorry came from behind at a speed of 35 miles per hour and crashed into the rear portion of the stationary lorry. The passengers in the second lorry sustained injuries as a result of collision. It was held that both the drivers were negligent and liability was apportioned between the drivers of stationary lorry and second lorry in the ratio of 75 : 25 respectively.

9. In view of the above principle of law, I am of the view that the drivers of both the vehicles i.e. truck No. HYR-5417 and Matador No. HYK-2617 were negligent in causing the accident in question and in this view of the matter, the liability can be apportioned in the ratio of 75 : 25.

10. The Tribunal had assessed the dependency of the claimants on the deceased at Rs. 600/- per month i.e. Rs. 7,200/- per annum and by applying a multiplier of 16, the total compensation to which they were held entitled comes to Rs. 1,15,200/-. However, due to contributory negligence of the driver of matador No. HYK 2617, the claimants are held entitled to Rs. 86,400/- only. The claimants shall also be entitled to interest the rate of 12 per cent per annum from the date of claim petition. The compensation amount is to be shared by the claimants as under :-

Smt. Manjeet Kaur, widow : Rs. 36,400/- Smt. Avtar Kaur, Mother : Rs. 10,000/-
Sh. Harbans Singh, Father : Rs. 10,000/- Rashmi Chhabra, Daughter : Rs. 15,000/-
Saryjit Singh, Son : Rs. 15,000/-

The amount of compensation awarded to both the minors be deposited in a Scheduled Bank in fixed deposits in their respective names and shall be disbursed to them on attaining their majority.

11. The award of the Motor Accidents Claims Tribunal is modified to the above extent. The respondent Insurance Company shall be liable to pay the amount of compensation.

12. The appeal is allowed in the manner indicated above. No costs.