
(1985) 08 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 222 of 1982

Rukmani Devi

APPELLANT

Vs

Rameshwar Datt and Another

RESPONDENT

Date of Decision : 12-08-1985

Acts Referred:

Citation : (1985) 08 P&H CK 0116

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

Bench : Single Bench

Advocate : V.K. Bali, for the Appellant; Harbhagwan Singh and Jayshree Anand, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The challenge in appeal here is to the denial of compensation to the claimant Rukmani Devi who sustained injuries while travelling in the car HRL 400 when there was a head-on collision between this car and the Matador HRK 6856 coming from the opposite direction. This happened on 17th July, 1979 at about 9.30 p.m. in the area of village Gajwar on the Grand Trunk Road between Gharaunda and Panipat. It was the finding of the Tribunal that it was the driver of the car who was wholly to blame for the accident and no compensation was thus payable to the claimant. It is this finding that is now assailed.

2. It is the common case of the parties that there was indeed an accident between the car and the Matador and it occurred on a straight road which was wide enough to permit even two large vehicles to cross. There is also nothing to suggest that the road ahead for both these vehicles was not clear. Negligence was thus inherent in the accident having occurred in this situation. The question, of course, to be determined is whether the Tribunal was justified in placing the entire blame for the accident upon the car driver alone.

3. According to the claimant the accident occurred when the Matador came on to its wrong side of the road and hit into the car. The Respondents, on the other

hand, blamed the car driver in a similar fashion, namely, that it was the car that turned to its right and hit into the Matador.

4. The case of the claimants rests upon the testimony of PW 3 Raj Kumar who claimed to have witnessed the occurrence while following the car on his motor cycle. To corroborate him, there is the testimony of the claimant PW 4 Rukmani Devi. It deserves mention here that it was on the statement of PW 3 Raj Kumar that the First Information Report relating to this accident was recorded the next morning. According to both these witnesses the accident occurred when the Matador came on to the wrong side of the road. PW 3 Raj Kumar further stated that after the accident, the injured was removed to the hospital at Panipat and he then left for Ambala to inform the relations of those killed and injured in this accident and it was when he returned the-next morning that his statement was recorded by the police.

5. The Respondents, on the other hand, examined RW 1, Rameshwar Dutt, the driver of the Matador, to depose to the counter version of the accident, namely, that it occurred when the car came on to its right and hit into his Matador. He was supported in this behalf by RW 2 Mangal Sen who was travelling in the Matador at the time of the accident.

6. A reference to the material on record would show that the car was clearly overloaded, in that, there were nine persons travelling in it. Great stress was laid upon this circumstance with a view to it being a pointer to the rash and negligent driving of the car driver. As regards PW 3 Raj Kumar, it was strongly contended that the testimony of this witness was not worthy of reliance, in that, his conduct was unnatural in leaving the injured in the hospital and then returning only the next morning and then reporting the matter to the police. The Tribunal had indeed doubted the presence of this witness.

7. Taking an overall view of the circumstances of the case, it is no doubt true that the evidence of PW 3 Raj Kumar deserves to be scrutinized with care, but he cannot be held to be a false witness. Once the injured had been removed to the hospital, the next natural step was clearly to inform their relations of the accident, which this witness proceeded to do. The mere fact that he did not first report the matter to the police and did so only the next morning, cannot justify total rejection of his testimony. In this behalf, it is also pertinent to note that no report of this accident was made to the police by any of the Respondents which must be treated as a strong circumstance against them.

8. An important piece of evidence here is the position of the two vehicles after the accident. The site plan would show that the car was partially on the kacha portion of the road and only partly on the metalled portion thereof, whereas the Matador had turned towards its right and was covering more than half the road. This goes counter to the version of Rameshwar Dutt, the driver of the Matador. He, no doubt, sought to explain this by saying that the Matador had turned slightly towards its right when the car hit into it and the car being a lighter

vehicle, went back and stood at some distance. This description does not fit in with what is shown in the site plan.

9. Considered in their totality, the circumstances of the case, as they emerge from the evidence here, clearly point to both the drivers being equally at fault. In the situation as it arose, there was a distinct possibility of the accident being avoided even if one of the drivers had exercised due care and caution. Obviously, neither did so. There can thus be no escape from the conclusion that both the drivers must be held to be equally to blame. The finding on the issue of negligence must consequently be modified accordingly.

10. According to the claimant, she suffered two fractures on her right leg and on that account she was hospitalised at the Rajendra Hospital, Patiala for 20 to 25 days. She also had to lie in bed thereafter for about 11 months. As regards the expenses incurred by her on her treatment, no particular sum was mentioned. Just a vague statement that a huge amount had been spent on medicines and treatment, but she could not specify the amount. She, however, deposed that during the period of her hospitalisation and the 11 months that she spent in bed, she had to engage an attendant at Rs. 150/- per month.

11. Keeping in view the nature and extent of the injuries suffered and the pain and suffering caused to her thereby, there can be no manner of doubt that the claimant must indeed have required an attendant, as deposed to by her and she must also have spent some amount on her treatment. Besides this, she would also be entitled to general damages for pain and suffering and loss of amenities of life. Taking an overall view of the matter, it would be fair and just to hold the claimant entitled to a sum of Rs. 25,000/- on all these counts.

12. The claimant Rukmani Devi is accordingly hereby awarded a sum of Rs. 25,000/- as compensation which she shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

13. Respondent Nos. 1, 2 and 3 shall be jointly and severally liable for the compensation awarded.

14. In the result, this appeal is hereby accepted with costs. Counsel's fee Rs. 500/-.