

(1989) 10 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 135, 136 and 137 and Cross Objections No's. 177, 178 and 179 of 1982

Smt. Krishna Chadha and Others

APPELLANT

Vs

National Carriers and Others

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1990) 1 ACC 184 : (1990) ACJ 291 : AIR 1990 HP 82 : (1990) 1 ShimLC 281

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : K.D. Sood, Mallotra, for the Appellant; P.A. Sharma, Central Govt. Standing Counsel, for the Respondent

Judgement

Bhawani Singh, J.—These matters (F. A. O. No. 135 of 1982, Krishna Chadha and others v. National Carriers and others, F.A.O. No. 136 of 1982, Smt. M. J. Stone and others v. National Carriers and others, and F.A.O. No. 137 of 1982, Krishna and another v. National Carriers and others), arise out of the same accident and common award, therefore, they are being taken up together for decision by a common judgment.

2. Briefly, the facts are that the petrol tanker No. HRA-1807, owned by the National Carriers, Sadar Bazar, Ambala Cantt., and driven by Shri Gajinder Singh, was coming from Sungra towards Wangtu Bridge on 20-12-1968 while a military truck No. S.C. 15455 was coming from Wangtoo side. The collision between these two vehicles took place on a curve and the result was that the occupants of the army vehicle rolled down to river Satluj leaving no trace of any of them including the vehicle.

3. The claimants are the dependents of three of the five occupants of the army vehicle, namely, Sudesh Kumar Aggarwal, Krishan Lal Chadha and J. G. Stone. They have claimed different amounts of compensation for the loss of their only

bread earners in the accident. Besides, the owner of the vehicle, the driver, the Insurance Company as well as the Union of India are joined as parties and the case of the claimants is that the accident took place due to the collusion of these vehicles for their fault and these having been owned by two different respondents, compensation from both or either of them for their responsibility for causing the same has been claimed.

4. On the other hand, the respondents deny the liability to pay the compensation. The National Carriers and their driver Gajinder Singh have denied even the factum of the accident having taken place. Although it is admitted that the petrol tanker belongs to them and insured with the Oriental Fire and General Insurance Company, but it is stated that the same was not being driven in a rash or negligent manner, as alleged. The Union of India has admitted that three persons, namely, Krishan Lal Chadha, Sudesh Kumar Aggarwal and J. G. Stone were travelling in the military vehicle at the relevant time and they died in this accident but it is denied that the accident was the result of any rash and negligent act of the military driver; rather it is asserted that the collision took place on account of the rash and negligent driving on the part of the driver of the petrol tanker belonging to the National Carriers. Similar averments have been made by the Oriental Fire and General Insurance Company.

5. The Tribunal framed the following issues, in all these matters, on the pleadings of the parties.

"1. Did the alleged accident take place ?

2. If issue No. 1 is proved, did the accident take place due to the negligence of the drivers of both the vehicles?

3. If issue No. 2 is proved, then who is liable to compensate the petitioner and to what extent?

4. Is the petition of Mrs. Stone within time and on the prescribed form?

5. Relief."

6. During the trial of these cases, the claimants compromised the matters with the National Carriers and the Oriental Fire and General Insurance Company with the result that the legal representatives of Krishan Lal Chadha got a sum of Rs. 7,500/- in full and final settlement of the claim against these respondents and the legal representatives of Sudesh Kumar Aggarwal accepted a similar amount from these respondents and in the case of Shri J. G. Stone, a sum of Rs. 7,500/- was accepted. In this way, the claimants settled their claims against these respondents but kept the same alive against the Union of India since, according to them, the army vehicle owned by the Union of India was also involved in the collision. The Tribunal came to the conclusion that the accident was solely due to the rash and negligent act of the driver of the petrol tanker and, therefore, the Union of India was not responsible for payment of any compensation and since compromise had been effected with those respondents, the claim petitions stood

settled.

7. This order of the Tribunal was challenged in this Court and the learned Single Judge found that the compromise arrived at with the respondents with regard to the claims of the minors was void and not binding upon them and other claimants. However, the finding on the point of negligence was confirmed and the claim petitions were remanded for re-assessment of compensation. This decision of the learned single Judge of 19-3-1975 appeared before a Division Bench of this Court which held by its decision on 31-10-1979 that the decision of the learned single Judge holding the compromise as void qua the minors was perfectly legal but further held that the compromise was binding on the other claimants. The finding on the point of negligence was also set aside and evidence was allowed to be adduced after the remand of these claim petitions. Accordingly, the Tribunal proceeded with the trial of these claim petitions and came to the conclusion that the accident was entirely on account of the negligence of the driver of the petrol tanker, thus exonerated the driver of the military truck from any negligence or contributory negligence. I proceed to examine this aspect of the matter since the learned counsel appearing for the respondents, other than the Union of India, vehemently asserted that the finding of the Tribunal holding the driver of the tanker responsible for the accident was thoroughly against the evidence on record which pointed out the negligence of the driver of the military truck. In the alternative, it is also argued by them that in case the driver of the petrol tanker is not exonerated completely, in that event, this is, at the most, a case of contributory negligence On the part of the drivers of the two vehicles involved in the collision, therefore, Union of India may be held responsible for the whole or part of the claims in question. It is also submitted that since there is no compromise with the Union of India, the claims, qua this respondent may be payable to all the claimants.

8. On the question of the responsibility for the collision, evidence discloses negligence on the part of the driver of the tanker.

9. Shri Mangat Ram (P.W.7) is a L. Naik. He was posted in that area during this time. He reached the spot first in point of time. He found that a petrol tanker was pulling another petrol tanker at that place. On inquiry, he was told by the Conductor that an accident had taken place due to the striking of a vehicle with a boulder. He states that he searched the place and found some clothes and traces of a vehicle having gone down and found that a military vehicle had gone down the river. He returned to Sungra and informed his officers about this accident, including Naik M. S. Mubaiya, and they went to the spot. He found the radiator and right side of the oil tanker damaged. The tanker was on its wrong side. His statement was recorded before a Court of inquiry held by the army authorities into this incident. The police arrived at the scene of occurrence at their request. They found no signs of brake application by the offending vehicle. The military vehicle was going up-hill while the tanker was going down the hill.

10. Shri M. S. Mubaiya (P.W. 8) has also supported the statement of L. Naik

Mangat Ram (P.W.7). He prepared site plan (Ex. P.W. 8/A) and after an inquiry on the spot, he came to the conclusion that the petrol tanker was responsible for causing this accident. He found that the damage to the tanker was towards its left side. He states that the brakes of the vehicle were in order.

11. Perusal of the evidence on record clearly establishes that the accident was due to the negligence of the petrol tanker. The defence of the driver and the conductor pointing out that the same was due to the failure of brake system and dashing of the vehicle towards the hill side, appears to be absolutely baseless and an afterthought. The road at the place of accident is quite broad, the army vehicle was going up hill, therefore, was naturally moving at a normal speed on its right side of the road, whereas the petrol tanker was going down hill and it appears that the truck driver could not control its speed and dashed against the army vehicle which fell off the road and rolled down into the river. When this had happened, the driver of the tanker, its conductor, assisted by another tanker, pulled this vehicle to the hill side to show that the offending vehicle was brought to the hill side due to the failure of its brake system. This defence of the driver of the tanker is not supported by any other cogent and convincing evidence. The fact that the report (Ex. B/1) with the police pointing out that the accident took place due to the failure of brakes is not convincing since the same was given by the driver and conductor of this vehicle. It appears, therefore, clearly that the petrol tanker was moving so fast on the wrong side of the road that it dashed against the army vehicle with such a force that the army vehicle, smaller in size with less speed, could not stick to the ground and rolled down into the river. Examination of the findings arrived at by the Tribunal in this regard also indicate the same conclusion and they are, therefore, confirmed and I hold that the army vehicle was not, at all, responsible for the collision in question.

12. The next question relates to the payment of compensation, extent thereof and the responsibility therefor. Having once held that the driver of the petrol tanker was responsible for the collision, the major claimants in these cases have already compromised the claims, therefore, their cases no longer fall for consideration. Only the cases of minor claimants have to be examined.

FAO(MVA) No. 135 of 1982

13. In this case the claimants are the widow of the deceased Krishan Lal Chadha and his four children, namely, Swami Dayal Chadha, Guru Dayal Chadha, Sushma Rani and Miss Bittu (all minors). Shri G. P. Pasboitia states that the deceased was employed as Supervisor in B/S Grade I at the time of the death of the deceased. His total emoluments were Rs. 466/- with free boarding and lodging at the place of his posting. The Tribunal has rightly deducted Rs. 66/- that the deceased may be spending on himself and sending a sum of Rs. 400/- per month to the family. Thus calculated, the yearly amount would come to Rs. 4800/-. At the time of death the age of the deceased was 41 years. The Tribunal has applied multiplier of 11 years purchase which appears to be unreasonable and on low side. The appropriate multiplier, in this case, can be 15 years. Thus

calculated (400x 12x15) the total amount after adding Rs. 3,000/- on account of loss of expectancy of life, would come to Rs. 75,000/-. The share of Smt. Krishna Chadha comes to Rs. 15,000/- and those of the minors Rs. 60,000/-. As already said, the family has been paid Rs. 7500/- out of which the share of each claimant comes to Rs. 1500/- and the total share of the minors comes to Rs. 6,000/-. In this way the award-able amount in favour of the minors comes to Rs. 54,000/ -. The Tribunal has already awarded Rs. 38,640/- to them and they are entitled to the balance amount of Rs. 15,360/- with interest at the rate of 8% from the date of application till December 1985 and 12% thereafter till the date of payment. The award is modified to the aforesaid extent.

FAO (MVA) No. 136 of 1982

14. The claimants, in this case, are the widow of the deceased J. G. Stone and his three minor children, namely, Vincent Stone (minor son), Susan Stone (minor daughter) and innocent John Stone (minor son, born after the death of the deceased as is evident from para 2 of the Grounds of Appeal). The deceased was working as Asstt. Inchange Clerical in Military Engineering Service and he was 46 years of age at the time of his death. He was drawing total emoluments of Rs. 388/- with free boarding and lodging facilities. The Tribunal has rightly deducted Rs. 58/- that the deceased may be spending on himself leaving Rs. 330/- per month for his family. In this way the yearly amount comes to Rs. 3,960/-. The Tribunal has unreasonably applied the multiplier of 10 years purchase. As a matter of fact, multiplier of at least 12 years is appropriate in this case. Thus counted -- $330 \times 12 \times 12$ -- the total amount comes to Rs. 47,520/-. To this an amount of Rs. 3,000/- is to be added for loss of expectancy of life raising the amount to Rs. 50,520/-. By dividing this amount equally the claimants are entitled to Rs. 12,630/- each and as Mrs. M. J. Stone has compromised the matter, all the minors are entitled to Rs. 37,890/- and from this amount, their total share received out of Rs. 7500/- is further to be misused. Thus, these minors are entitled to Rs. 32,265/-. This Tribunal has awarded them Rs. 23,400/-. This balance amount of Rs. 8,865/- be paid to them with interest at the rate of 8% from the date of application till December 1985 and 12% thereafter till the date of payment. The award is modified to the aforesaid extent.

FAO (MVA) No. 137 of 1982

15. The deceased, in this case, was B.Sc. in Civil Engineering and was working as Superintendent in B & R Grade I. His total emoluments at the time of his death were Rs. 540/- per month besides free boarding and lodging facilities. He died at the young age of 26 years. The Tribunal has unreasonably deducted Rs. 140/- that the deceased may be spending on himself since in other cases Rs. 66/- and Rs. 58/- have been deducted. In this case also an amount, say, Rs. 70/- may be deducted on this account. Again the Tribunal has inappropriately applied multiplier of 15 years purchase in this case which deserves to be at least 18 years. Thus calculated $(470 \times 12 \times 18 + 3000)$ the total amount comes to Rs. 1,04,520/-. Here also Smt. Krishna had compromised the matter for Rs. 7500/-

wherein the share of the minor comes to Rs. 3750/-. After deducting Rs. 3750/- from the total amount of compensation of Rs. 52,260/- falling to the share of the minor, the amount of compensation now payable comes to Rs. 48,510/-. The Tribunal has already awarded Rs. 33,750/-. The balance amount of Rs. 14,760/- be paid to the minor with interest at the rate of 8% from the date of application till December 1985 and 12% thereafter till the date of payment. The award is modified to the aforesaid extent.

Cross objections No. 177 of 1982 (in FAO No. 135/1982); No. 178 of 1982 (in FAO No 136/1982); No. 179 of 1982 (in FAO No. 137/1982).

16. It has already been held that the accident took place due to the negligence of the driver of the tanker and the military vehicle was not at all responsible for the same. Therefore, the respondents other than the Union of India, are liable to pay the compensation. The submissions relating to the earnings of the deceased are also without substance in view of the evidence adduced by the claimants, Therefore, the reasonable amount payable to the claimants by way of compensation in these cases has been assessed as aforesaid. There is no substance in the Cross Objections and the same are accordingly dismissed.

17. In all cases, costs on parties.