

(1989) 07 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No"s. 22 and 23 of 1982

Smt. Mewa Devi and Others

APPELLANT

Vs

Ram Parkash Rajinder Paul and Another

RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Evidence Act, 1872 — Section 101, 102 , 103, 104
Motor Vehicles Act, 1939 — Section 110D

Citation : (1990) ACJ 468 : AIR 1990 HP 53 : (1990) 1 ShimLC 15

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.C. Mandhotra, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—These appeals (FAO (MVA) 22 of 1982 Smt. Mewa Devi and Ors. v. Ram Parkash Rajinder Paul and Anr. and FAO (MVA) No. 23 of 1982 Smt. Kamla Devi & Ors. v. M/s Ram Parkash Rajinder Pal and Anr.) arise out of the same accident and the same award of the Motor Accidents Claims Tribunal, Mandi, Kullu and Lahaul districts decided on 3-3-1982 thereby rejecting the claims of the appellant. The issues involved being common, both the appeals are being taken up for decision together.

2. The facts, in brief, are that the appellants are the dependants of the deceased in these two cases and the claim-petitions pertain to the death of Waryam Singh (FAO 22 of 1982) and Paras Ram (FAO 23 of 1982) in an accident of truck bearing No. HPM-9755 on 30-1-1981 owned by respondent No. 1 and insured with respondent No. 2. It took place near Badanu on Mandi-Kullu road at 5-30 p.m. on that day. As a result of this accident, deceased Waryam Singh succumbed to injuries in Civil Hospital, Mandi, on 4-1-1981 and deceased Paras Ram died on 5-1-1981 in the same hospital due to injuries. In both the cases, the claims are to the extent of Rupees two lacs preferred through separate claim-petitions on the ground that the accident, in question, was as a result of rash and

negligent driving by the driver of the vehicle. The claims were rejected by the Tribunal on the ground that the steering of the vehicle got locked as a result of which it turned to the right and fell down into the river. According to the Tribunal, it was a latent defect for which none could be held responsible. The result was that the claim petitions were dismissed. Hence these appeals by the claimants to assail the award of the Tribunal.

3. It is urged by Sh. M. C. Mandhotra, learned counsel appearing for the claimants, that the Tribunal drew its conclusions on the basis of conjectures and surmises, otherwise there is enough evidence on the record to indicate that the accident was due to the rash and negligent act of the driver. It is further submitted that the Tribunal has not properly read and understood the evidence with the result that wrong conclusions have been arrived at and the same, therefore, deserve to be set aside. On the other hand, Sh. K. D. Sood, learned counsel appearing for the Insurance Company, urges that the award of the Tribunal is correct and in view of the latent defect in the steering of the vehicle, no other conclusion could be possibly arrived at by the Tribunal. At this stage reference to the statements of material witnesses on this aspect of the matter is necessary.

4. Pritam Singh (P.W. 2) states that the vehicle was coming at a high speed. It fell down after breaking the parapet on the road side. The place where the accident took place was quite level and was so wide that three vehicles could pass at the same time at that point. It did not rain that day. Lot of traffic plies on that road. The truck which met with the accident, he states, was being driven rashly. A driver can drive the vehicle on that road at any speed he liked. He did not know the cause of the accident and he could not say that the accident took place due to the jamming of the steering. There was no curve at the place where the truck fell down but there was a small curve towards Badanu at a distance of fifteen yards from the place of accident. The turn of the curve was towards the right side while coming from Pandoh.

5. Rajinder Pal (R.W. 1) states that after three-four days of the accident he came to know from the conductor in the hospital that prior to the accident he heard the driver saying that the steering of the truck had got jammed and the brakes could not function. It was due to these defects which cropped up suddenly that the accident took place. In cross-examination, he states that he had no personal knowledge about the cause of the accident.

6. Rup Lal (R.W. 4) is a Police mechanic. He states that the vehicle was inspected by him on 4-I-1981 and he gave his report (Ex. R.W. 4/1). According to him, the vehicle met with the accident due to the fact that the steering of the same got locked before the accident. Despite the fact that the steering had got locked before the accident, the brakes of the truck were in perfect condition. According to him, when the steering got locked, the driver applied brakes and the truck diverted towards the right side and fell into the river. At the time of the inspection of the vehicle the parts of the same had got separated due to the

accident and he found the steering locked and regarding applying of brakes, he concluded the same by observing the marks of the wheels on the road and it is possible that the steering of the truck got locked after it went down the road breaking the parapet.

7. Raghu Nandan (R.W. 5) is the conductor of the truck. He states that while returning from Thalot at Badanu there was a sound of klick. The driver said that the steering had got locked. The driver applied the brakes but since he was confused so could not say whether the brakes worked or not. The truck fell down the Khad. The driver was driving the truck at a normal speed at that time and the same was not due to any mistake on the part of the driver. He denies the suggestion that the accident took place due to the rash and negligent act of the driver. He did not know as to how the steering got locked. His observations regarding the locking of the steering were based on the observations of the driver.

8. The case of respondent No. 1 was that the accident did not take place due to the rash and negligent act of the driver. The same happened due to some mechanical defect as the steering of the vehicle was locked and brakes were not in order due to that locking of the steering and the vehicle went out of the road which resulted in the accident. Respondent No. 2 in its reply states that the vehicle was going at a slow speed and all of a sudden the steering of the same got jammed and the driver applied the emergency brakes but as the road was wet, the vehicle skidded and fell down.

9. Sh. K. D. Sood, after referring to the statements of the witnesses, submitted that the defect in the steering was of latent nature, therefore, the same could not be detected and this being so, the respondents were not liable for the claim set up by the claimants. Reference to 1968 ACJ 363 (Delhi) *Mandi Kulu Road Transport Corporation v. Janak Raj Singh* and 1970 ACJ 325 *Tan Chye Choo v. Chong Kew Moi* was made to highlight the aforesaid contention. However, in view of the facts on record, I am not convinced with the submission of Sh. K. D. Sood. The decisions referred to by the learned counsel do not apply to the present case in view of the evidence being discussed hereinafter.

10. The defence of the respondents is not at all clear. It is alleged that the steering of the vehicle got jammed and the brakes, when applied, did not either work or the vehicle skidded due to the wet road. Examination of this aspect of the matter in the light of the evidence on record discloses that the respondent did not categorically say that the accident was purely due to the jamming of the steering. Rather, it appears from their statements that the brakes of the vehicle were not in order and it went out of control of the driver. It is also stated that the road at the particular time was wet and on application of the brakes the vehicle skidded with the result that the accident took place. There is another version which discloses that due to the curve at a distance of 15 yards from the place of the accident, the driver had turned the steering to the right and it got locked so the vehicle went towards the right side but this case of the respondent is also not clear as there are not only contradictions on this aspect of the matter but the

evidence discloses that there was no question of turning the steering to the right as the small curve was at that time 15 yards away from the place of accident, Rup Lal (R.W-4) is also not definite as to the stage when the steering developed the defect because in his statement he has stated that it was possible that the steering of the vehicle got locked after it went down the road breaking the parapet. Further the evidence also discloses that the vehicle was being driven at a fast speed and the road between Pandoh and Mandi is quite safe for high speed driving.

11. In order to succeed in a defence that the accident was due to a mechanical defect, the owners have to prove that they had taken all necessary precautions to keep the lorry in a road-worthy condition and that the defect occurred in spite of reasonable care and a caution taken by the owners. In order to sustain a plea that the accident was due to a mechanical defect, the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by a reasonable care. The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care, the defect remained hidden. *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, . The respondents have not discharged the burden on them by bringing on record the evidence to this fact. It is asserted by Sh. K. D. Sood that the vehicle was in a road-worthy condition because it had gone to a place beyond the place of accident and it was on the way back that the accident in question took place. Therefore, it is urged that the vehicle could be said to be in a fit road-worthy condition. This fact is not enough. The burden has to be discharged by bringing on record the evidence to show that all necessary care and caution had been taken to keep the vehicle in a perfect condition and during that process no possible visual defect could be seen in the vehicle. The conclusions drawn by the Motor Accident Claims Tribunal, on this aspect of the matter, are against the evidence on record and completely divorced from the basic principles applicable in such like cases.

12. The result, therefore, is that there is force in these appeals. The same are allowed and the awards of the Motor Accidents Claims Tribunal are set aside. The claim-petitions are remanded to the Tribunal with the direction to restore them to the original numbers and proceed to decide the same on merits in accordance with law. Costs of Rs. 500/- in each case to be paid by the respondents in equal shares.