

**(1986) 05 P&H CK 0016**  
**In the Punjab And Haryana At Chandigarh**

The New India Assurance Co. Ltd.

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

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**Date of Decision :** 07-05-1986

**Acts Referred:**

**Citation :** (1987) 1 ACC 16 : (1986) 90 PLR 106

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

**Bench :** Single Bench

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## Judgement

S.S. Sodhi, J.—The accident here was between the two trucks HRH-5995 and PNO-1537 coming from opposite directions. Amongst those killed were Prem Nath and Pawan Kumar, who were travelling in the truck HRH-5995. They were the owners of the goods being carried in that truck at that time. The accident occurred on March 17, 1980 at about 1.30 A.M. on the Sirsa-Hissar Road. The Tribunal held both the truck drivers to blame for the accident; negligence being apportioned at 70 per cent as that of the driver of the truck HRH-5995 and 30 per cent as that of the driver of the truck PNO-1537. Both sets of claimants, that is, widow and children of Prem Nath and Pawan Kumar deceased were awarded as compensation the amount, claimed which was Rs. 40,000/- in each case.

2. The finding of negligence recorded against the drivers of two trucks involved in the accident warrants no interference in appeal, particularly in the context of the previous litigation between the parties where a similar finding was returned. The reference here being to the two separate claims preferred by owners of the two trucks claiming compensation for the damage to their trucks from each other. Both these claims were consolidated and tried together by the Tribunal. A similar finding on the issue of negligence was returned as in the present case. No appeal was preferred against the decision in those claim applications. The finding on the issue of negligence there has" now acquired finality which precludes this Court from giving any contrary finding. In other words, it must be taken as established and settled that the accident occurred on account of the composite negligence of both the truck-drivers with 70 per cent of the blame being that of

driver of the truck HRH-5995 and 30 per cent of the driver of the other truck PNO-1537.

3. As regards the quantum of compensation payable to the claimants as mentioned earlier, both sets of claimants have already been awarded the entire amount claimed which was Rs. 40,000/- each. In appeal now, counsel for the claimants sought permission to amend the claim application with a view to claim enhanced compensation on the ground that at the time when the claim application was filed, ad valorem court fee was payable on a claim beyond Rs. 40,000/-. The claimants being poor, were not in a position to pay court fee and on this account, they had limited their claim to Rs. 40,000/-. The law has since been changed and now ad valorem court fee is no longer payable in respect of the claims under the Motor Vehicles Act and it was consequently prayed that the claim application may be allowed to be amended to claim a larger amount. It was also mentioned in this behalf that the Tribunal had assessed the quantum of compensation payable to be the claimants at a figure which must be larger than that awarded.

4. The prayer for amendment of the claim application was opposed by the owners as also the insurance companies with which the two trucks had been insured mainly on the ground that the application was barred and stood barred by time.

5. In dealing with the prayer for amendment of the claim application, it would be pertinent to note that the award of the Tribunal was made as far back as October 31, 1983. The present appeals had been filed by the insurance company on April 18, 1984. No appeal was filed by the claimants, but later they filed cross objections claiming enhanced compensation. These cross-objections were filed on September 28, 1985. The application for amendment of the claim application was not filed till November 13, 1985. As regards the change of the law relating to payment of ad valorem court-fee on claim applications under the Motor Vehicles Act, it was with effect from December 18, 1984 that ad valorem court-fee on such applications was dispensed with.

6. Delay on the part of the claimants in seeking amendment of the claim application is thus writ large and it is pertinent to note that the claimants have come forth with no explanation to account for the delay in seeking this amendment.

7. Further, as regards the plea that the claimants were too poor to pay the court-fee, there is no mention in the claim application of what assets, if any, the claimants were possessed of with a view to enable the court to determine that such indeed was the financial status of the claimants. Counsel also has no answer to the point raised by Mr. L.M. Suri, counsel for the Insurance company that if indeed the claimants were unable to pay the court-fee, they could have sought permission to file the claim as indigent persons.

8. Such being the circumstances here, there is clearly no warrant for permitting

any amendment in the claim application at this stage. This prayer is accordingly hereby declined.

The matter that now falls to be determined is with regard to the liability of the New India Assurance Company for payment of compensation is awarded in this case. It is with this insurance company that the truck HRH-5995 stood insured at the time of the accident. As mentioned earlier, the two deceased-Prem Nath and Pawan Kumar were travelling in this truck when the accident occurred. Relying upon the judgment of this Court in Oriental Fire and General Insurance Co. Ltd. Vs. Gurdev Kaur and Others Mr. L.M. Suri counsel for the appellant rightly contended that the Insurance Company could not be held liable in respect of the death of the hirers of the truck travelling in it in order to guard their goods in it. This contention must thus prevail and it follows, therefore, that the New India Assurance Company the insurer of the truck HRH-5995 cannot be held liable for the compensation awarded. The liability for the amount awarded must rest upon the driver and owner of the truck HRH-5995 as also the driver, owner and the Insurance Company of the other truck PNO-1537; all these parties being jointly and severally liable to the claimants for the compensation awarded. This would mean that it could be open to the claimants to recover the whole or any part of the compensation awarded from any one or more of these parties. The parties liable would of course inter se be entitled to retable contribution for the amount paid to the claimants under the award of the Tribunal.

9. In the result the appeals filed by the Insurance Company are hereby accepted while the cross-objections are dismissed. In the circumstances, there will be no order as to cost.