Mrs. Neera Tangri and Others Vs Pritam Dass Khurana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 25, 1997

Acts Referred: Motor Vehicles Act, 1988 â€" Section 110A

Citation: (1997) 2 ACC 397 : (1998) ACJ 261 : (1997) 116 PLR 643 : (1997) 3 RCR(Civil) 434

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Deepak Suri, for the Appellant; D.P. Gupta, (Insurance Company), for the Respondent

Judgement

V.K. Bali, J.
I propose to decide these five appeals bearing Nos. 256, 296, 297, 298 and 470 of 1995 by common order as all the

appeals arise from one accident. The Motor Accident Claims Tribunal has chosen to dispose of all claim applications by one order. Learned

Counsel for the parties state that the same course be adopted by this Court also. Facts giving rise to these appeals need brief mentioned.

2. On 9th of June, 1991, Om Parkash Tangri alongwith his wife Smt. Neera Tangri, his daughter Ashu Tangri, sons Arun Kumar and Vinay Kumar

and one more person Parbhat Singh was coming from Delhi to Rajpura by Maruti Car No. CHE 6900. After crossing Madhuban Police Complex,

when the car was heading towards Karnal on its left hand side being driven by Om Parkash at slow speed, one Truck No. HRJ 6451 belonging to

Pritam Dass Khurana, which as per the claimants was being driven rashly and negligently on a very fast speed by Jit Singh respondent No. 2 came

from the opposite direction on wrong side and struck against Maruti Car resulting into injuries to all the occupants of the car. The car was totally

smashed. All the injured were removed to Arpana Hospital, Madhuban immediately but within few hours Om Parkash Tangri died. Five separate

claim petitions arising out of this accident were filed. Smt. Neera Tangri claimed compensation on account of death of Om Parkash Tangri in the

main petition referred to above. It was averred that Om Parkash Tangri was 43 years five months and 24 days of age on the date of accident and

he was working as Accounts Manager in Amrit Banaspati Co. Ltd., Rajpura earning Rs. 4599.35 per month and his widow, two sons and one

daughter were dependent upon him. In all a sum of Rs. 12,00,000/- was claimed on account of death of Om Parkash. A sum of Rs. 1,15,000/-

was also claimed for damages caused to the car. In yet another claim petition filed by Vijay Tangri aged about 12 years, compensation to the tune

of Rs. 5,00,000/- was claimed on account of injuries suffered by him. In yet another claim petition filed by Arun Tangri aged about 15-1/2 years,

Rs. 5,00,000/- were claimed on account of injuries suffered by him. In the main petition filed by Smt. Neera Tangri an amount of Rs. 2,00,000/-

for the injuries sustained by her was claimed. Parbhat Singh aged 38 years filed yet another claim petition asking for Rs. 5,00,000/- on account of

injuries suffered by him. As mentioned above, all these claim petitions were consolidated and decided by common order.

3. The respondents contested these claim petitions and pleaded in the written statement that Car No. CHE-6900 was being driven rashly and

negligently at a fast speed on a wrong side of the road whereas truck was being driven by Jeet Singh on right side at a normal speed and when the

car came on the wrong side of the road, the truck driver took his truck on kacha part of the berm by the side of metalled road on his left hand side

but the car struck against front part of the truck. Thus, the accident was caused due to rash and negligent driving of the car driven by Om Parkash

Tangri. It was also pleaded that the claimants cannot be allowed to take advantage of the wrong on the part of car driver. An alternative plea was

also taken that in case contributory negligence of drivers of the two vehicles was found, then since the truck had been got insured with Oriental

Insurance Company Ltd. so the amount of compensation be got paid from the Insurance Company. Insurance Company filed separate written

statement and pleaded that the accident had taken place on account of rash, negligent and careless driving of the car by its driver and therefore, no

compensation could be paid to the claimants. On the pleadings of the parties, Motor Accident Claims Tribunal framed the following issues :-

1. Whether the accident in question resulting into death of Om Parkash Tangri, injuries to claimant Parbhat Singh, Vinay Tangri/Mrs. Neera Tangri

and Arun Tangri was caused due to rash and negligent driving of Truck No. HRJ-6451 by its driver respondent No. 2? OPP

2. If issue No. 1 proved, whether the claimants of all these claim petitions are entitled to compensation, if so, how much and from whom? OPP

3. Whether the claim petition is bad for mis-joinder of parties and non-joinder of necessary parties? OPR

4. Whether the claim petitions have not been presented by proper person? OPR

5. Relief.

4. After resultant trial, all the claim petitions were dismissed. The findings on the crucial issue i.e. issue No. 1 were returned against the claimant-

appellants. The learned Tribunal returned findings on issue No. 3 and 4 against the claimants. However, issue No. 2 was not decided as findings on

issue No. 1 had turned against the claimants. With a view to prove issue No. 1 the claimants. With a view to prove issue No. 1 the claimants

examined Smt. Neera Tangri PW-3 and Parbhat Singh PW-4 whereas in rebuttal respondents examined Jit Singh. There is no need at all to

mention the evidence given by these three witnesses, two from the side of the appellants and one from the side of respondents as obviously they

have supported the pleadings reflected in the claim petition and in the written statement.

5. It is not disputed between the counsel representing the parties that issue No. 1 has been decided almost exclusively on the basis of site plan Ex.

P-11. This site plan came to be'' prepared by the police when information with regard to the accident came to its knowledge. This site plan was

prepared by Head Constable Ram Singh at the spot. Before any comments upon site plan Ex. P-11 on which the crucial issue has been

determined are made, it may be worthwhile to mention that as per version of both the parties, it was a head on collision. It is also not a case of

either of the parties that the driver of Maruti was trying to overtake some other vehicle. It is, thus, apparent that the accident took place without

their being any intervening factor. It is conceded between the parties that the accident took place at 9.30 A.M. in broad day light. In a case of this

kind, this Court is of the considered view that the learned Tribunal ought to have returned a finding of contributory negligence. In fact, the entire

case has been based upon Ex. P-1 which is a site plan showing the position of vehicles involved in the accident after the event. The site plan at the

most could be taken in to consider to corroborate the respective versions of the parties but it could not be exclusively made to hold that it is the

driver of Maruti Car who was driving rashly and negligently. During the course of arguments it could not be disputed that the position of the

vehicles after the impact may not depict exactly as to how the accident had taken place as it is often seen that after the accident the vehicles do not

stand at the same place at which the accident had taken place. The position of the vehicles after the accident is such that even it is not possible to

make out whether one is going from one direction or the other. To say, therefore, simply on the basis of site plan and from the fact from where the

vehicles were standing after the impact that it must be the driver of Maruti Car who was rash and negligent in driving would be incorrect. It may not

be very much material but may also be mentioned that in the F.I.R. that came to be lodged after the occurrence, it was reported by the informant

that the driver of the truck after the accident had run away from the spot. Be that as it may, in view of this Court, deciding the case on the basis of

site plan alone has resulted in incalculable harm and injustice to the claimants. Witnesses examined on behalf of the claimants who are none other

than injured in the same accident have fully supported the version given in the F.I.R. Assuming that their evidence was not absolutely true, in the

facts and circumstances of this case a finding of contributory negligence ought to have been returned by learned Tribunal. As mentioned above, it is

head on collision without any intervening factor in a broad day light. It cannot possibly be imagined that the driver of Maruti Car was driving on

extreme right side as is sought to be projected in the written statement filed on behalf of respondents as also by driver of the truck who appeared

as his own witness.

6. This being the case of contributory negligence, the driver of both the vehicles have caused this accident and therefore, the responsibility ought to

have been shared by these drivers and if the truck was insured, then by the insurance company as well. The extent of liability of both the drivers in

this case can easily be said to be 50 per cent and that being so half the damages have necessarily to be paid by the truck driver and the insurance

company if the truck was insured.

7. As mentioned above, Tribunal has not returned any finding on quantum of compensation and it would not be just for this Court to assess the

same as that would deprive the parties right of first appeal which is alive both on questions of law and fact. I set aside the order passed by the

Tribunal by reversing the finding on issue No. 1 and by substituting the said finding by holding that it is a case of contributory negligence to the

extent indicated above and remit the case to the Motor Accident Claims Tribunal to determine the undecided issues. So ordered.

8. Parties, through their Counsel, are directed to appear before the Motor Accident Claims Tribunal, Karnal, on 28th of May, 1997. The Motor

Accident Claims Tribunal shall endeavour his very best to finally dispose of the matter. Parties are left to bear their own costs.