



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 2423/2012

New India Assurance Company Ltd., through Regional Manager,

----Non-Claimant No.3-Appellant

Versus

1. Smt. Kanchan Devi W/o Shri Chathurbhuj Ji Soni, aged 60  
years,

2. Smt. Chaman Soni W/o Shri Pawan Kumar, aged 32 years,

3. Kumar Saloni D/o Shri Pawan Kumar, aged 12 years,

4. Master Ankit S/o Shri Pawan Kumar, aged 10 years

5. Smt. Sarla W/o Shri Gajraj Ji Soni, aged 40 years

6. Mst. Prakash S/o Late Shri Gajraj Ji Soni, aged 16 years

No.3 and 4 are minor through their Natural Guardian Mother

Smt. Chaman Soni and No.6 is minor through Natural

Guardian Mother Smt. Sarla Soni

-----Claimants-Respondents

7. Raghuvir Singh

8. Jaswant Singh

9. Hari Prakash Sahani

10. Smt. Hari Prakash Sahani

11. Rahul Sahani

12. Oriental Insurance Company Ltd. Beawer (Insurance



----Non-Claimants-Respondents

---

For Appellant(s) : Mr. Praveen Jain through VC  
For Respondent(s) : Mr. Rishipal Agarwal through VC  
Mr. Jai Prakash Gupta through VC

---

**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**Judgment Reserved on : 02/02/2022**

**Judgment Pronounced on : 05/02/2022**

**REPORTABLE**

1. Appellant-New India Assurance Company Ltd. is the insurer of the Truck bearing Registration On 24.12.2007, the truck was dashed by a rash and negligent trolley which resulted in death of driver Raghuvir Singh. For the accident aforesaid Sojat City PS Case No.389/2007 was registered on 25.12.2007. The police came and with the help of JCB Crane dragged the damaged truck to the soiled portion of the road and the truck was left there under seizure of the police. Copy of the FIR is Ex-8 on this record.

2. On 26.12.2007, driver Pawan Kumar alongwith others was driving the car bearing Registration The FIR of Sojat City PS Case No.390/2007 registered on 27.12.2007 would reveal that Pawan Kumar was rash and negligent while driving the car on 26.12.2007 and dashed with the said truck from behind the truck, resulting in death of the Pawan Kumar and injury to others. After investigation of Sojat City PS Case No.390/2007, the police found that the accident was due to rash and negligent driving of Pawan Kumar. The car was insured with Respondent No.12-



Oriental Insurance Company Ltd. The legal representatives of victim Pawan Kumar brought Claim Case No.364 of 2011 (78/2008) before the Motor Accident Claims Tribunal (Upper District & Sessions Judge) (Fast Track) No.2, Beawar.

3. The Tribunal found that the said accident was due to negligent parking of the truck without any flash light for guidance of other moving vehicles or any other sign showing stationed truck. In the result, the Tribunal fixed 50% liability on the truck and 50% contributory negligence on the deceased.

4. The appellant is aggrieved by the impugned judgment dated 01.05.2012 passed in Claim Case No.78 of 2008/364 of 2011.

5. Mr. Praveen Jain, learned counsel for the appellant contends that without verifying the actual state of affairs, the driver and owner alongwith insurer of the truck were impleaded as party in the claim petition alongwith owner and insurer of the car. Without verifying the fact that driver Raghuvir Singh had already died two days back in the accident of the said truck. Learned counsel contends that the Tribunal wrongly fixed 50% negligence of already damaged truck rather the accident was due to 100% negligence of car driver. Moreover, the truck was under the seizure of the police, hence it could not have been held that the parking of the truck was result of negligence of driver or owner of the vehicle. The owner of the truck Jaswant Singh was examined as NAW-2 in the claim case and he is specific that the crane brought by the police had dragged and shifted the truck to the soilly road by the side of the main pitch road. The police was not made party deliberately otherwise the entire matter would have surface before the Tribunal.



6. While admitting this appeal for hearing, this Court issued notice to Respondent No.12 only on the question whether the appellant-Assurance Company can be held liable to pay the compensation or it is the respondent No.12-Oriental Insurance Company, which should bear the liability of payment of compensation.

7. Mr. Rishipal Agarwal, learned counsel for the respondent No.12 contends that the Tribunal has relied on the judgment of **Raj Rani and Ors. Vs. Oriental Insurance Company Ltd., reported in 2009 (13) SCC 654** corresponding to **2008 ACJ (SC) 1617** wherein the fact of the case was that the truck was parked on the middle of the road without any flash light and the vehicle which caused death was coming from behind the truck and dashed against the truck. Learned counsel further relies on the judgment of **Hon'ble Karnataka High Court in Misc. First Appeal No.1378/2017: Shriram General Insurance Co. Ltd. Vs. Pushpa & Ors.,** in support of his contention on the point of contributory negligence. Reliance has been placed on **National Insurance Company Ltd. Vs. Mrs. Sunita Yadav and Ors., reported in 2007 (1) TAC 992 (Raj.).**

8. In my view, none of the aforesaid cases are helping respondent No.12 in the facts and circumstances of this case. In **Raj Rani (supra)** case the driver of the truck had parked the truck on the mid of the road without any flash light or indicator working. In **Shriram General Insurance Co. Ltd. (supra),** again the driver of the lorry had parked half on the Tar road (pitch road). Likewise, in **National Insurance Company Ltd. (supra)** the truck was parked by the driver without any reflectors, blinkers



or indicators. Against the said truck a jeep with a moderate speed had collided.

In the present case, admittedly the parking of the truck was not due to negligence of the driver or owner of the truck. The driver had already died in the accident two days ago. The damaged truck was dragged with the help of JCB crane to the side of the road on the soiled portion. These facts are not disputed. The claimant of this case unaware of the aforesaid factual position or by suppressing the aforesaid factual positions impleaded the dead driver Raguvir Singh as party to the claim petition. Moreover, the truck was in the seizure of the police and no police official was impleaded as party to the claim petition. The police investigation report available on the record reveals that the accident was result of sole negligence of the driver of the car, who was rash and negligent at the time of accident. The informant of the case is eye-witness of the occurrence.

9. Therefore, in my view, the learned Tribunal on wrong in appreciation of the facts as well as the law while holding that 50% of the contribution to the accident was of the truck. There is no evidence that the truck was parked at the public place by its driver or the owner rather definite evidence is that the police crane had dragged the truck to the soiled portion of the road leaving the pitch road completely free for movement and the car had dashed going on the soiled portion of the road without any perceivable obstruction from any other vehicle. Therefore, the accident was result of the rash and negligence driving of the car.

10. Accordingly, the impugned judgment is set aside to the extent that the Tribunal has fixed the liability to pay compensation on respondent Nos.2 and 3 i.e. owner and insurer of the truck. In



fact, the liability was against the owner and insurer of car during use whereof the accident took place. Therefore, the exoneration of respondent Nos.4, 5, 6 and 7 by the Tribunal is also not sustainable in law. Accordingly, the same is set aside and it is ordered that the entire liability to pay compensation goes against the owner and insurer of the car. Since the car was insured with respondent No.12 it is liable to pay entire compensation payable to the claimants. If there would be any violation of the terms and conditions of policy i.e. the driver of the car being without any license to drive the vehicle or without any proper license, respondent No.12 would be competent to recover from the owner of the car in a separately instituted proceeding after making payment to the claimant.

11. It has been informed that the appellant has already paid Rs.5,10,500/- to the claimant. Therefore, the appellant would be entitled to be reimbursed by respondent No.12. Respondent No.12 shall pay the aforesaid amount to the appellant alongwith interest paid by the appellant to the claimant on the aforesaid amount. Exercise be completed within three months to avoid 12% interest till recovery.

12. Accordingly, this appeal stands allowed to the aforesaid extent.

(BIRENDRA KUMAR),J

/RAJAT KUMAR