

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NO. 1779 - 1780 OF 2024  
(@ SLP (CIVIL) NOS.3991-3992 OF 2019)

SHANTHI NANAI AH & ORS.

APPELLANTS

VERSUS

ORIENTAL INSURANCE COMPANY LIMITED & ANR. ETC. RESPONDENTS

ORDER

Leave granted.

2. Heard learned counsel for the parties.
3. The appellants are aggrieved by the common order dated 24<sup>th</sup> April, 2018 passed by the High Court of Karnataka at Bengaluru whereby the award passed by the Senior Civil Judge & MACT at Virajpet *vide* Judgment dated 12<sup>th</sup> September, 2012 was set aside.
4. *Vide* order dated 12<sup>th</sup> September, 2012, the Senior Civil Judge & MACT at Virajpet held the appellants entitled to a compensation of ₹12,32,144/- (Twelve lakhs thirty two thousand one hundred forty four only) along with interest @ 6% per annum from the date of passing of the order till realisation. However, the said amount was directed to be paid in half by the owner and driver of the lorry which was standing idle in the middle of the road, and the other half by the Insurance Company with which the jeep, on which the deceased was travelling was insured.
5. The responsibility on the basis of contributory negligence has been

apportioned also on the driver of the vehicle/jeep on which the deceased was travelling.

6. Thus, in essence, the issue has crystallized as to whether the finding of contributory negligence on the part of the driver of the jeep in which the deceased was traveling is sustainable or not.

7. Having considered the matter, in the facts of the case, where it is not in dispute that the lorry was standing in the middle of the road on which it was not supposed to be stationed at midnight and the jeep in question came from behind hitting the same, resulting in the death of the deceased, we do not find that the driver of the said jeep could have been in any way held to be responsible, either fully or partially so as to come under the definition of being liable for contributory negligence in matters where claim is filed seeking compensation for injury or death resulting from such accident.

8. Learned counsel appearing for the appellants placed reliance on the decision of this Court in **Archit Saini and Another vs. Oriental Insurance Company Limited & Ors.**<sup>1</sup>, the relevant paras being extracted hereinbelow :

“7. In the present appeals, the moot question is whether the High Court committed manifest error in reversing the well considered decision of the Tribunal on issue No.1 answered against the respondents, instead concluding that it was a case of 50% contributory negligence on the part of the deceased driver of the Maruti Car.

8. After having perused the evidence of PW-7, Site Map (Ext.P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well considered

opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW-7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flash lights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext.P-45) reinforces the version of PW-7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext.P-45) filed along with the charge-sheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/ offending vehicle was parked without any indicator or parking lights. The fact that PW-7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flash lights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW-7 nor has any suggestion been made that no vehicle with flash lights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

9. Suffice it to observe that the approach of the High Court in reversing the well considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.

10. Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent no.1 negligently parked the Gas Tanker/offending vehicle in the middle of the road without any indicator or parking lights.”

9. Learned counsel for the Oriental Insurance Company Limited who was the insurer of the jeep in question submits that the liability was on the lorry which was static and thus no recovery is liable to be made from them and 50% has rightly been saddled on the owner and driver of the lorry. However, he submits that at least, the Insurance Company may be given the right to recover it from the lorry owner because it was 100% due to the

negligence of the lorry which was lying idle on a moving road in the middle.

10. Having given our anxious thoughts, we find that the matter needs interference.

11. The Court having arrived at the conclusion that there was contributory negligence on the part of the driver of the jeep in question does not seem to be proper and is, accordingly, set aside.

12. Thus, the entire amount would be paid to the appellants by the respondent Insurance Company within six weeks from the date of production of a copy of this order.

13. Accordingly, the appeals stand allowed. It is left open for the respondent Insurance Company to recover the amount, in accordance with law, from the owner/driver of the lorry.

14. Pending application(s), if any, shall stand disposed of.

.....J.  
( AHSANUDDIN AMANULLAH )

.....J.  
( SANDEEP MEHTA )

**NEW DELHI**  
**07<sup>th</sup> FEBRUARY, 2024**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 3991-3992/2019

(Arising out of impugned final judgment and order dated 24-04-2018 in MFA No. 11869/2012 24-04-2018 in MFACR No. 76/2013 passed by the High Court Of Karnataka At Bengaluru)

SHANTHI NANAIHA & ORS.

Petitioner(s)

VERSUS

ORIENTAL INSURANCE COMPANY LIMITED & ANR. ETC.

Respondent(s)

( IA No. 175145/2019 - EXEMPTION FROM FILING O.T.)

Date : 07-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH  
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Ardhendumauli Kumar Singh, Sr. Adv.  
Mr. Pai Amit, AOR  
Ms. Pankhuri Bhardwaj, Adv.  
Ms. Vanshika Dubey, Adv.  
Ms. Ananya Sahu, Adv.

For Respondent(s) Mr. Ravi Sabharwal, Adv.  
Ms. Adarsh Nain, AOR

UPON hearing the counsel the court made the following  
O R D E R

1. Leave granted.
2. The appeals stand allowed in terms of the signed order.
3. Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja)  
Assistant Registrar-cum-PS

(Nand Kishor)  
Court Master (NSH)

(Signed Order is placed on the file)