

ITEM NO.1

COURT NO.1

SECTION III

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).19448/2015

(Arising out of impugned final judgment and order dated 27-06-2014 & 24-07-2014 in FA No.386/2000 passed by the High Court Of Gujarat At Ahmedabad)

SUBHADRABEN & ANR.

Petitioner(s)

VERSUS

DINMOHAMMED IBRAHIM & ORS.

Respondent(s)

WITH

SLP(C) No. 19450/2015 (III)

SLP(C) No. 19449/2015 (III)

SLP(C) No. 28114/2015 (III)

SLP(C) No. 28115/2015 (III)

Date : 28-11-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. O.P. Bhadani, Adv. [AOR]
Mr. S.S. Pandey, Adv.
Mr. A.K. Suman, Adv.
Ms. Rashmi Atreya, Adv.

For Respondent(s) Ms. Manjeet Chawla, Adv. [AOR]
Mr. P.K. Seth, Adv.

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

Leave granted.

The appeals are allowed with costs, in terms of the signed order.

(Subhash Chander)
AR-cum-PS

(H.S. Parasher)
Assistant Registrar

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.19963 OF 2017
(Arising out of SLP(C) No.19448/2015)

SUBHADRABEN AND ANR.Appellants

:Versus:

DINMOHAMMED IBRAHIM & ORS.Respondents

WITH

CIVIL APPEAL NO.19964 OF 2017
(Arising out of SLP(C) No.19449 of 2015)
CIVIL APPEAL NO.19965 OF 2017
(Arising out of SLP(C) No.19450 of 2015)
CIVIL APPEAL NO.19966 OF 2017
(Arising out of SLP(C) No.28114 of 2015)
CIVIL APPEAL NO.19967 OF 2017
(Arising out of SLP(C) No.28115 of 2015)

O R D E R

1. Leave granted.

2. The principal question involved in the present appeals is regarding the justness of the view taken by the High Court in holding that the driver of the fiat car, which met with the accident resulting in death of five persons travelling in the said car, had committed contributory negligence to the extent of 50%. The Motor Accident Claims Tribunal (AUX, V) Ahmedabad (Rural) at Mirzapur, Ahmedabad, while deciding M.A.C. Petition No.1398/94 and connected applications after evaluating the evidence on record, unambiguously held that the truck driver was solely responsible for the accident and the driver of the fiat car had not contributed to the cause of the accident. The Tribunal, inter alia, in paragraph 14 of its judgment dated 19.01.2000 observed thus:

"14. The applicant have produced evidence with list Ex.49 which consist of Complaint Ex.104, Panchnama Ex.105 etc. The Complaint Ex.104 shows the death of the deceased persons. It also shows the names of the

deceased. Consequent upon the complaint Ex.104 Panchnama was drawn to that effect. The Panchnama shows the number of both the vehicles involved in the accident. Thus, the factum of the accident and involvement of both vehicles is proved by documentary evidence.

The applicants have also examined one eye-witness Ranjitsinh at Ex.146. He has deposed that at the time of the accident there was darkness. It is also deposed that one truck was loaded with iron plates and some plates were hanging and lying outside the rear side of the truck in question. It is also deposed that the driver of the truck had not kept any light or reflector to avoid this unfortunate accident. It is also deposed that the Fiat Car was proceeding on the back side of the Truck. He has deposed that the driver of the truck had applied brakes suddenly and abruptly due to which the following Fiat Car dashed on the back side of the truck and iron plates too. It is thus clear that the applying of sudden brakes by the driver of the Truck, is the root cause of the accident. It is an admitted position that the truck was loaded with iron plates. It is a case of the applicants that the death of the deceased was the injuries sustained on account of these iron plates. It appears that the truck was overloaded with iron plates. It may be stated that the eye-witnesses Ranjitsinh at Ex.146 has clearly deposed that the Truck was loaded with iron plates and some plates were hanging and lying outside the body of the Truck. Thus, the say of the applicants is also supported by the oral evidence, who is also an eye-witness of the accident. Thus, there is no reason to disbelieve the say of the applicant that the Truck was overloaded with iron-plates hanging outside the body of the truck due to which the accident occurred and passengers in the car lost their lives. Thus, the driver was negligent in loading the goods in such a dangerous manner and not putting any red light or flag on the goods lying outside the body of the truck and applying sudden brakes in the middle of the road. If he had not loaded the goods in a dangerous manner which he has preferred and had out red light or flag as an indicator of goods hanging outside the body of the truck certainly this unfortunate accident could be avoided. The eye-witnesses Ranjitsinh has also clarified in his deposition that the driver of the Truck had not kept any light/reflector on the iron plates hanging outside the body of the truck. Had he kept any reflector or light on the iron plates certainly the other vehicles following the truck could have been cautioned.

The learned advocate of the applicants have placed reliance upon the judgment reported in 1990 ACJ 450 in the case of Laxmi and Co V/s Savitri Devi Agarwal and judgment reported in 1986 ACJ 331 in the case of Bhagwanai Devi v/s Krishan Kumar Saini and argued that when the driver of the offending vehicle has not been examined, adverse inference requires to be drawn against him. In the present case the driver of the Fiat Car succumbed to death. The driver of the Truck in question has not been examined by the other side. I agree with the principle laid-down in the aforesaid citations and the arguments advanced by the learned advocate appearing on behalf of the applicants. In view of the citations as above adverse inference requires to be drawn against the opponents.

As against above the learned advocate of the other side has argued that the driver of the Fiat Car could see the preceding truck and the question of putting red-light or red flag on the iron plates does not arise. It is also argued that the real and moot question of the accident is the excessive speed of the car. At this stage it would be just and proper to state that the opponent has not produced either oral or documentary evidence to prove its contentions that the Fiat Car was in excessive speed and as against this contention is oral evidence of eye-witness. Thus, I do not agree with the arguments advanced by the opponents advocate.

So far the arguments of the other side about projection of loads of iron plates loaded in the truck is concerned it is argued that the Panchnama Ex.104 does not mention the same. It may be stated here that the deposition of eye-witness is very much clear to answer the contention of the other side. The eye-witness Ranjitsinh in his clear words stated that the iron plates were hanging outside. Thus, there is no substance in the arguments of the learned advocate of the other side. The learned advocate of the other side has submitted that the eye-witness Ranjitsinh has admitted that by the head-light of the car, it was possible to see any vehicle going ahead of it and so there is no question of putting Red-light or Red flag on the iron plates. So if the vehicle going ahead of it can be seen by any driver following the truck, it can very well be presumed that, the contents of rear parts of the truck can equally be seen. At this juncture it would be just and proper to state that the eye-witness has deposed that there was some darkness and it was cloudy atmosphere at the time of the accident, he has also deposed that the truck driver had not put any red signal or red flag on the goods hanging out side the

body of the truck. Thus, it is very difficult for the driver of following vehicle to assess in the darkness the danger his preceding vehicle possess. It is very difficult for a driver of the following vehicle, even though the had lights are on, to sight the goods protruding outside the body of the preceding vehicle in darkness and in absence of any red light or red flag unless on it, and in the present case it is clear from the deposition of the eye-witness that the truck driver had applied brakes and loading goods protruding outside the body of the truck and not keeping any red light or indicator is the root cause of the accident.

Thus, in view of the aforesaid discussion, documentary evidence such as F.I.R. and Panchnama and the oral evidence of the eye-witness and also view of the aforesaid judgments I hold that the driver of the Truck was solely responsible for the accident and the driver of the car has not contribute to the case of the accident. Hence, I answer issue No.1 accordingly."

3. The High Court reversed the aforementioned well considered finding of the Tribunal vide impugned judgment dated 27.06.2014 and 24.07.2014, without analysing the material evidence by observing thus:

"7. Taking into consideration the aforesaid discussion, the judgment and award of the Hon'ble Tribunal is required to be varied so far as ascertainment of negligence is concerned. By any standard, findings recorded by the Hon'ble Tribunal that the driver of the truck was 100% negligent, cannot be sustained in the eye of law, even if it is accepted that the truck driver had applied sudden brakes.

7.1 This Court, in its considered opinion, cannot absolve the driver of the fiat car, who unfortunately lost his life in the accident for being negligent. Therefore, this Court is of the opinion that it will be in the interest of justice if both the drivers are held negligent to the extent of 50%. This negligence of 50% on the part of the truck driver is because it is not brought on record either by the truck driver himself or by anybody on his behalf as to what exactly had happened on the fateful day which caused such serious accident wherein four human lives were

lost. In absence of any material on record, to the contrary, there is reason for this Court to believe that, 'the fiat car driver would not have applied sudden brakes, there was no reason for the car to hit the truck going ahead of the car'. At the same time, there being violation of Rule 23 in not driving the car at a moderate speed and at a safe distance so as to meet with any unforeseen emergency/contingency, the driver of the fiat car is held contributory negligent and negligence is apportioned in the ratio of 50% - 50%."

4. Having heard Mr. O.P. Bhadani, learned counsel appearing for the appellants and Ms. Manjeet Chawla, learned counsel appearing for the respondents and going through the record, we have no hesitation in observing that the conclusion recorded by the High Court on the point in issue regarding contributory negligence of the driver of the fiat car is untenable, if not perverse. No analysis of the evidence on record has been done by the High Court including the relevant facts which have come on record - that the truck driver pleaded guilty in the criminal case instituted against him in connection with the subject accident. We find that the Tribunal has considered all the relevant aspects of the matter. It has properly analysed the evidence produced by the claimants. The Tribunal has also highlighted the fact that the respondents took defence that the fiat car was driven in excessive speed, but no evidence or eye-witness was produced to substantiate that defence. Even the truck driver was not examined for the reasons best known to the respondents. Whereas, the oral and documentary evidence produced by the claimants would establish that the truck was loaded with iron plates which were hanging 4 to 5 feet outside the body of the truck and that no red light, reflector or red signal was displayed,

further, the truck driver suddenly applied brakes, as deposed by the eye-witnesses Ranjitsinh Keshrisinh Rana and Jayantibhai.

5. The Tribunal also considered the defence taken by the respondents that the driver of the fiat car was following the truck without keeping sufficient distance from the truck to avoid collusion. The Tribunal, however, on analysing the evidence held that the truck was overloaded with iron plates hanging outside the body of the truck, the truck driver was negligent in loading the goods in such a dangerous manner without putting any red light, reflector or red flag on the goods hanging outside the truck and also applied sudden brakes in the middle of the road and due to darkness the fiat car, which was following the truck, collided with the truck. Further, the respondents did not produce any evidence to substantiate their plea that the fiat car was being driven in excessive speed causing the fateful accident. On this basis, the Tribunal justly found that the truck driver was solely responsible. The High Court, however, overturned this well considered finding in a very casual manner merely by referring to Rule 23 of the Rules of the Road Regulations, 1989. The said Rule 23 reads thus:

"23. Distance from vehicles in front.- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

The High Court even after reproducing paragraph 14 of the Tribunal's Judgment in its entirety, however, did not advert to the attending circumstances considered by the Tribunal. The respondents having failed to produce any evidence that the fiat car

was being driven in excessive speed, we fail to understand as to how Rule 23 can come to the aid of the respondents. Strikingly, the High Court has upheld the finding recorded by the Tribunal that the truck driver applied sudden brakes. Having concurred with that finding and absent any evidence produced by the respondents about the fiat car being driven in excessive speed, we cannot countenance the approach of the High Court in concluding that the fiat car was not being driven in a moderate speed or to invoke the theory of contributory negligence of the driver of the fiat car to the extent of 50%. The finding so recorded by the High Court is not only contradictory but error apparent on the face of the record.

6. Accordingly, we allow these appeals with costs. The judgment and order passed by the High Court is quashed and set aside. Instead, the award passed by the Motor Accident Claims Tribunal dated 19.01.2000 in the respective claims, is restored and revived.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
28th November, 2017.