Before S. S. Sandhawalia, C.J. and J. V. Gupta, J.

ORIENTAL FIRE & GENERAL INSURANCE COMPANY and others,—*Appellants.*

versus

MANJIT KAUR and others,—*Respondents.*

Letters Patent Appeal No. 417 *of* 1977.

May 6, 1980.

Motor Vehicles Act (IV of 1939)*—Tenth Schedule. Rule* 9*—Car proceeding on the left side of the main road and driven at a normal speed—No evidence of rash or negligent driving—Car approaching a traffic island which is a T junction—Scooter driven by the deceased coming from opposite side swerving to the right in violation of statutory traffic rules—Head-on collision between the vehicles resulting in death of the scooter driver and injuries to his wife seated on the pillion seat—Scooter driver—Whether solely responsible for the accident—Car driver approaching T junction—Whether duty bound to slow down his vehicle in such circumstances—Claim for compensation—Duty of the claimants in regard to proving negligence.*

Held, that the car driver was driving his car on the main G. T. road and as he approached a traffic island located at the junction of the G. T. road with the road going over the over-bridge, the scooter driven by the deceased with his wife seated on the pillion seat and coming from the opposite side instead of going round the traffic island which was incumbent on him for going towards his right made a sudden short cut without warning or signal and swerved towards the right to climb on to the over bridge and in attempting to do so crashed head on into the on-coming car and that as a result of the force of the impact, both the riders of the scooter were violently thrown on the road resulting in the death of the driver and injuries to his wife. The car was being driven at a normal speed and with due care and caution when it approached the traffic island. Despite the head-on collision, the driver of the Car was able to stop the vehicle within 2 to 3 yards of the impact and the vehicle did not over run either of the two victims of the accident. However, the front portion of the car was damaged. In these circumstances no negligence or rashness can be ascribed to the car driver so as to saddle

him with any liability. Rule 9 contained in the Tenth Schedule of the Motor Vehicles Act, 1939, prescribes the basic precautions for turning towards the right which the deceased was obliged to observe when going round the traffic island but he plainly infracted the said rule and more blatantly in the circumstances of this case. It must, therefore, be held that the deceased was guilty both of rank factual negligence as also of statutory negligence by violating the prescribed rules of the road. It cannot be said that the contribution of the deceased in terms of negligence was merely 20 percent and in fact it was, indeed, 100 per cent. The deceased threw away rule of caution and safe driving to the winds in rashly crashing head-on to the car proceeding on the left side of the road.

(Paras 6 to 12).

Held, that it is axiomatic that before the driver of a vehicle can be saddled with liability for negligence, it must be so established against him by the claimants. (Para 10).

Appeal under Clause X of the Letter Patent against the judgment of Hon'ble Mr. Justice M. R. Sharma passed in F.A.O. 48/71, dated 25th August, 1977, reversing that of Shri Kulwant Singh Tiwana, Accident Claims Tribunal at Amritsar, dated 28th November, 1970, making a deduction of Rs. 24,800 on account of the lump sum payment and ordering that the claimants be paid a sum of Rs. 1,50,000. In addition, Shrimati Manjit Kaur, claimant-respondent, shall be entitled to receive Rs. 3,600 as ordered by the learned Tribunal. The appellant shall also be liable to pay interest at the rate of 4 per cent per annum on the unpaid amount from the date of the award upto the date of payment.

L. M. Suri & V. P. Gandhi, Advocates, *for the appellant.*

G. S. Giani, Advocate, *for the respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. These seven appeals—one preferred by the claimants and the rest by the Oriental Fire and General Insurance Company Ltd., and the owner of the insured vehicle (with cross-objections in two)—raise identical questions of law and fact. Learned counsel for the parties are agreed that this judgment will govern all of them.

2. All these appeals arise from an unfortunate automobile accident which took place on the 31st of July, 1968, within the town of Amritsar. On that day at about 10.30 p.m., Sehdev Seth, appellant was driving Fiat Car No. PNJ 200 from Railway Station, Amritsar, towards Putlighar on the main Grand Trunk Road. As the driver

approached a traffic island located at the junction of the G.T. Road with the road going over the over-bridge (called the Rego Bridge, which passes over the railway lines) he dipped his head lights. From the opposite side a scooter driven by Harbans Singh, deceased, with his wife Smt. Manjit Kaur (now the claimant along with her children) seated on the pillion seat thereof approached nearer. The deceased scooter driver instead of going round the traffic island which was incumbent on him for going towards his right made a sudden short cut and swerved towards the right to climb on to the Rego over-bridge. In attempting to do so he crashed head on into the on-coming car No. PNJ 200 driven by Sehdev Seth, appellant and the force of the impact violently threw both the riders on the scooter on the road. The driver of the car stopped the vehicle dead within two to three yards of the impact. However, Harbans Singh, deceased, received grievous injuries and even though he was removed forthwith to the V. J. Hospital, he succumbed to them during the night. Smt. Manjit Kaur, claimant received relatively minor injuries and survived. The accident apart from others was witnessed by Constables A.W. 6 Inder Singh and A.W. 7 Shingara Singh.

3. Smt. Manjit Kaur claimant along with her five children preferred a petition before the Tribunal claiming demages to the tune of Rs. 4,40,000. The learned Tribunal held on issue No. 1 that the driver of the car was driving it at a relatively high speed and had been negligent in not being able to avoid a collision with a scooter. He assessed the damages for the death of Harbans Singh at a lump sum of Rs. 43,530 and also granted Rs. 3,600 in respect of the injuries sustained by Smt. Manjit Kaur. On appeal being preferred by the claimants as also by the insurer and the car-owner, the learned Single Judge has held that the deceased Harbans Singh was certainly guilty of negligence but opined that his contribution towards this accident should be fixed at 20 per cent whilst that of Sehdev Seth appellant at 80 per cent, apparently because he was, according to the learned Single Judge, responsible for the accident to a larger extent. After apportioning the negligence the learned Single Judge adverted to the issue of damages and enhanced the amount of compensation for the death of Harbans Singh to Rs. 1,50,000 whilst maintaining the compensation of Rs. 3,600 given to Smt. Manjit Kaur claimed for her injuries.

4. In this appeal the matter is now in a narrow compass in view of the findings of fact arrived at by the learned Single Judge himself. These have indeed been not seriously assailed even on

behalf of the claimants. With regard to the patent negligence, on the part of Harbans Singh, deceased, in driving the scooter he first observed as follows:—

> "In the appeal, I have gone through the evidence with the help of the learned counsel, so far as the omission of Harbans Singh, deceased, to make a turn round the traffic island is concerned, evidence of Inder Singh, A.W. 6, is quite clear. He has categorically stated that the deceased did not reach the traffic island before he made a turn towards the Rego Bridge. It is now to be seen whether in these circumstances the appellant still should be held responsible for negligent driving or not ......"

Adverting then to rule 9 contained in the Tenth Schedule of the Motor Vehicles Act the learned Single Judge also held that in face of its clear language Harbans Singh, deceased, was also negligent to some extent. However, in apportioning the negligence the brief rationale thereof is only as follows:—

> "The learned counsel for the respondents had drawn my attention to the photograph of the site after the accident took place. It shows that the front portion of the car driven by the appellant was also damaged. From this fact it can safely be inferred that the deceased had gone fairly ahead towards Rego Bridge when the appellants car, apparently being driven at a fast speed, struck against it. I am, therefore, of the view that negligent driving of the appellant was to a large extent responsible for this unfortunate accident. In these circumstances, I hold that the contribution of the deceased in terms of negligence towards this accident should be fixed at 20 per cent."

5. In the aforesaid context the very first and indeed the primary question herein is whether in face of the virtually admitted factual position and the glaring infraction of the statutory traffic rules by Harbans Singh, deceased, himself he was not primarily and solely responsible for the accident due to his own rash and negligent driving. The answer to my mind appears to be plain that he indeed was so.

6. Since the learned Single Judge has laid the larger and the heavier burden of contributory negligence on Sehdev Seth, appellant, it is expedient to advert to this aspect first. Now it is not in dispute that the time of the accident was as late as 10.30 p.m. Admittedly at that time the wide G. T. road at the material point was relatively bereft of traffic. Sehdev Seth, appellant, was proceeding in his car on his left side with all the normal and reasonable care of a good driver when he approached the traffic island. It has to be highlighted that this traffic island is located at what is virtually a 'T' junction where the relatively minor road over the Rego bridge joins the main highway. Admittedly again the traffic island is not in the middle of the G.T. road, but on its extreme and where the road over the bridge joins the same. There is no evidence worth the name that either when approaching the traffic island or after passing the same, the car was being rashly or fastly driven The significant fact in this context is that A.W. 1 Manjit Kaur, petitioner, the star-witness in the case does not say a word in her examination-in-chief even that the car was being driven fastly or negligently. None of the witnesses adduced on behalf of the claimants have even attempted to assess precisely the speed of the car. A.W. 6 Inder Singh and A.W. 7 Shangara Singh, the two police constables. who have no axe to grind in their evidence clearly stated that as Sehdev Seth, appelant, approached the traffic island, he took the basic care of dipping the headlights of his car which were on. In his cross-examination, R.W. 2 Sehdev Seth, appellant, stated that he was driving at a speed between 20 to 30 miles per hour. Considering the wide road, the absence of the traffic and the time of the night, this speed cannot even remotely be labelled as 'rash'. It bears repetition that the car was being driven on the main G. T. Road and therefore, there was no duty cast upon its driver to slow down his vehicle when approaching a T-junction. It has been so held in *M/s. Hoshiarpur National Transporters Pvt. Ltd.* v. *The Motor Accidents Claims Tribunal, Hoshiarpur and others* (1).

7. That the car was being driven at a normal speed and with due care and caution, is further evident from the fact that despite the head-on collision, the driver was able to stop the vehicle within 2 to 3 yards of the impact. Sehdev Seth, appellant, in his evidence

(1) 1979 P.L.R. 618.

was categoric on the point and there is no challenge whatsoever to this part of his testimony. That he instantly and heavily braked his vehicle and brought it to a halt in the shortest distance, is evident from the relative short length of the skid marks. Equally it is the case that after the impact both the scooter and its two riders fell in front of the car, yet it is nobody's case that this vehicle either overran or hit the scooter or any one of the two victims of the accident opposite it. That would plainly indicate that the car was being driven under complete control and at no excessive speed. The photographs of the vehicle and its position on the road over the crossing as deposed to by A.W. 5, Shri Satya Parkash would all tend to show this. Indeed. the learned counsel for Smt. Manjit Kaur, claimant, could not pin point even a single factor which could lay the stigma of either negligence or high speed at the door of Sehdev Seth, appellant.

8. Equally material in this context is the fact that Sehdev Seth, appellant, in this very accident was criminally charged under sections 279, 338 and 304A of the Indian Penal Code. On virtually the same evidence which has been produced in this case, he was acquitted on January 20, 1969, by the Judicial Magistrate, 1st Class, Amritsar, on the clear finding that he was not guilty of rash or negligent driving and was, therefore, not liable under any of the charges framed against him. Even though the said finding is not binding yet its relevance is patent.

9. The only reason given by the learned Single Judge in holding that Sehdev Seth appellant, was to a large extent responsible for the accident seems to be that the front portion of the car was damaged and a vacillating finding that the same was apparently being driven at a fast speed when the deceased struck against it. With respect we find no factual basis for the assumption of any fast or rash driving by Sehdev Seth, appellant. It has already been noticed that there is no direct evidence on the point and circumstantial evidence patently negatives any such inference. Again the fact that the impact of the accident was on the front portion of the car can raise neither an inference of fast speed nor of negligence. On the admitted facts the deceased was approaching from the opposite side and in a sharp and dangerous swerve to the right he struck the car head on. Damage to the front portion of the car in such a contingency was inevitable and in our view no

adverse inference whatsoever against Sehdev Seth, appellant, can be raised therefrom.

10. To conclude on this aspect of the matter we find that there is no evidence whatsoever to ascribe either rashness or negligence to Sehdev Seth, appellant. It is axiomatic that before he can be saddled with liability negligence must be established by the claimants against him. The following observations of Kailasam, J., speaking for the final Court in *Minu B. Mehta and another* v. *Balkrishna Ramchandra Nayan and another* (2) are instructive:

> "........The concept of owner liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynch pin to recover compensation."

And again:

> "...... We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case."

11. Adverting now to the conduct of Harbans Singh, deceased, it is the common case that on the wide open G. T. Road at 10.30 p.m. he was approaching the car from the opposite side on a scooter along with his wife Smt. Manjit Kaur on the pillion seat. The headlights of the car being on, he could not possibly have missed noticing the same. However, in her cross-examination A.W. 1 Smt. Manjit Kaur evasively attempted to say that she did not remember that earlier in the criminal case, she had admitted that her husband and she were talking to each other and were also laughing at the material time. She was confronted with the relevant portion

(2) 1977 A.C.J. 118.

thereof in court. She here conceded that she had not seen the car before the actual impact with the scooter. Again, it is the admitted position that Harbans Singh, deceased, wanted to go on to the road over the Rego Bridge and it was, therefore, incumbent upon him to go round the traffic island located on the junction of the two roads. Instead of doing so without warning or signal he swerved to his right and making a hazardous short-cut, and abandoning all rules of traffic and precaution, attempted to get on to the Rego Bridge. Obviously, it was his duty both to go round the traffic island and in any case when swerving to the right to see that the road was clear. He observed neither of the two. In a totally indefensible violation of rules of the road, Harbans Singh, deceased, turned right and came directly in the path of the car and struck head-on against the bumper and the front grill thereof. Inevitably, he was thrown violently off and fatally injured. It is manifest both from the direct evidence on the point as also the photographs that the motor car at the time of the impact had passed the traffic island which Harbans Singh, deceased, was obliged to go round. It seems to be manifest from the above that Harbans Singh, deceased, threw every rule of caution and safe driving to the wind in rashly crashing head-on to the car proceeding innocuously on the left side of the road. The facts here are thus eloquent, but passing reference may also be made to precedent. In *Lew Voon Kong and another* v. *Mustaffa Bin Kamis* (3), a motor-cyclist who short-circuited to the other side of the road resulting in head-on collision was held entirely responsible therefor. By way of analogy, reference in this connection may also be made to *State of Punjab* v. *Roshnai Ram and others* (4) and *Satya Wati Devi* v. *Union of India* (5).

12. Now apart from the above, the learned Single Judge rightly found that the deceased Harbans Singh was equally, if not more, guilty of what may be called statutory negligence. Rule 9 contained in the Tenth Schedule of the Motor Vehicles Act is in the following terms :

"9. The driver of a motor vehicle shall—

(a) when turning to the left, drive as close as may be to the left hand side of the road from which he is

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(3) 1979 A.C. J. 86.

(4) 1976 A.C.J. 506.

(5) 1968 A.C.J. 119.

making the turn and of the road which he is entering;

(b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner, that—

(i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads ; and

(ii) it arrives as near as may be at the left hand side of the road which the driver is entering."

The application of the aforesaid rule, which prescribes the basic precautions for turning towards the right has further to be viewed in the context of the fact that admittedly there was a traffic island at the out junction which the deceased was obliged to go round for turning to the right. In doing what he did, Harbans Singh plainly infracted the aforesaid rule and more blatantly so in the peculiar situation which has been adverted to earlier, it must, therefore, be held that the deceased was equally guilty of the flagrant violation of rule 9. To sum up on this aspect, it appears to be plain that Harbans Singh, deceased, was guilty both of rank factual negligence as also of statutory negligence by violating the prescribed rules of the road and the accident was the direct result of his foolish and not merely careless or negligent driving of his scooter by him. We are unable to agree with the learned Single Judge that the contribution of the deceased in terms of negligence was merely 20 *per cent.* and in fact it appears to us that the same was indeed 100 *per cent.*

13. In view of the aforesaid finding the six appeals preferred by the Oriental Fire & General Insurance Company Ltd. as also the owner of the insured vehicle are hereby allowed and the compensation awarded against them is set aside. As a necessary consequence the appeal and the cross-objections preferred by the claimants are without merit and are hereby dismissed. The parties will bear their own costs.

J. V. Gupta, J.—I agree.

N. K. S.