

(1986) 03 AHC CK 0038

In the Allahabad High Court

Case No : First Appeal From Order No. 389 of 1978

Digvijai Tewari

APPELLANT

Vs

Rakesh Prasad Pathak and Others

RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1987) ACJ 795 : (1987) 61 CompCas 725

Hon'ble Judges : B.D. Agrawal, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

B.D. Agrawal, J.—This appeal u/s 110D of the Motor Vehicles Act is directed against the award given by the Motor Accidents Claims Tribunal (Additional District Judge), Gorakhpur, dated April 8, 1978.

2. The accident occurred on July 6, 1972, around 12.30 p.m. Mathura Prasad Pathak, aged about 40 years, it is alleged, was crushed by the truck No. USF 4554 belonging to the appellant near village Korari, Police station Barhalganj, District Gorakhpur. This occurred due to the truck having overturned at the spot. The death took place instantaneously. The deceased was employed as principal in the Saraswati Shishu Mandir, Azamgarh, getting a sum of Rs. 300 per month. The claimant, who is the son of Mathura Prasad Pathak (deceased), was aged about 9 years when the death of the father took place. He filed the claim giving rise to this appeal through his next friend claiming in all a sum of Rs. 72,000. The claim was resisted by the appellant, the owner of the truck, and also respondent No. 2, namely, Anand Insurance Co. Ltd., with whom the truck in question was insured.

3. The Tribunal has, upon considering the evidence, recorded the finding that the accident occurred due to the rash or negligent driving of the truck in question and that there is no evidence on the record to establish, as contended for the

appellant and respondent No. 2, that Mathura Prasad, the deceased, was a passenger on the truck at the relevant time. According to the case of the claimant, Mathura Prasad was a pedestrian when he was crushed being run over by the truck aforementioned. The compensation has been assessed at the sum of Rs. 33,000, which has been awarded to the claimant-respondent against the appellant. The insurance company has, however, been exempted from liability arising due to the accident.

4. Aggrieved, the appellant, who is the owner of the truck, has preferred this appeal.

5. Learned counsel for the appellant contends that there was no rational basis for the exemption granted to the insurance company from the liability arising due to the accident, in case it is accepted that the accident took place due to the rash or negligent driving of the truck. There is no dispute that Mathura Prasad died at the spot on July 6, 1972, around 12.30 p.m. and that this took place due to his being crushed by the said truck. In exempting the insurer, the Tribunal observes that the claimant has not adduced evidence to the effect that the truck was being driven by a licensed driver and that in case the driving was being done by a person not licensed to drive the truck, there is no liability arising on the part of the insurer. For this, in my view, the burden should have been laid upon the insurer and not on the claimant. There is no assumption, ordinarily, that the truck was being driven by a person not authorised in this behalf. In the written statement filed by the insurance company, it is significant, there is no plea even raised to the effect that the truck was not being driven by a person licensed in this respect. In the absence of any pleading in this behalf and also in the complete absence of any pleading from the side of the insurer, there could be no assumption made by the Tribunal that the truck could have been driven by some unlicensed driver and, on this account, there could be no liability fastened against the insurance company. The other ground taken by the Tribunal in this respect is that soon after the accident there was no information conveyed by or on behalf of the claimant to the insurance company. This also, in my opinion, could not constitute a legitimate ground for declining to fasten liability upon the insurer in case the same were to be made out otherwise under the law. The insurance company was duly served with process in the present case. Written statement was also filed by the insurer on April 24, 1974, which is on the record, and issues were drawn, including on the pleadings of the insurance company. Arguments as well, it appears, were advanced from the side of the insurance company before the Tribunal. On either of these grounds, therefore, the insurance company cannot escape liability.

6. Another question arising in this connection is whether the deceased was at the relevant time a passenger on the truck and whether he was, as such, an unauthorised passenger thereon. In the claim petition, the averment made is that Mathura Prasad was a pedestrian going on foot when he was crushed under the truck which overturned. The appellant, the owner of the truck, pleaded, no

doubt, that the deceased was a passenger on the truck and also unauthorised. But there was no evidence adduced from the side of the appellant in this respect nor is any evidence placed on the record by or on behalf of insurance company, which, too, raised the plea that the deceased was a passenger on the truck. In the complete absence of any evidence in that behalf, it may not be taken to be established that Mathura Prasad was a passenger on the truck and not a pedestrian as alleged by the claimant.

7. In so far as the quantum of the compensation awarded which is disputed by the appellant is concerned, it may be recalled that the claimant was about nine years old when the accident occurred. Mathura Prasad himself was about forty years of age. He was principal in an educational institution, referred to above, earning Rs. 300 per month as his salary. It was asserted for the claimant that he was also having cultivation over nearly ten bighas of land equivalent to four acres. The Tribunal has, however, assessed the total income at Rs. 300 per month only. Out of this, the Tribunal observes, the deceased may have been spending one-third, that is Rs. 100 per month, on himself and the balance he may have devoted to the maintenance and upbringing of his son and the life expectancy of the deceased has been estimated at sixty years, which, too, may not be said to be unreasonable. Applying the multiple of 20, the amount reached is Rs. 40,000 and out of this there has been deduction made at the rate of 33 per centum due to lump sum payment. A sum of Rs. 1,000 has been awarded as expenses incurred in funeral et cetera. The total amount of compensation awarded in this manner is Rs. 33,000, which, upon the analysis made above, may not be said to be arbitrary or unreasonable.

8. Learned counsel for respondent No. 2 lays stress upon contending that the burden to establish that the truck was being driven at the relevant time" by a licensed driver lay upon the claimant and since no such evidence has been given, the insured is exempted from liability in terms of the insurance policy. With this line of approach, I am unable to be in agreement. Ordinarily, the liability of the insurer would arise on the third person meeting with death due to the rash or negligent driving of the vehicle insured. In case the insurance company seeks to negative this liability on the plea that it is not covered in terms of the policy, a defence permissible to the insurance company u/s 96(2) of the Motor Vehicles Act, it would be for the insurer to establish this fact, there also being no presumption, as I mentioned above, that the driving was being done by a person not authorised in this behalf.

9. Consideration being had to the discussion made as above, the appeal succeeds in part only. The claim shall stand decreed against the appellant and respondent No. 2 both for a sum of Rs. 33,000 together with interest at the rate of six per centum with effect from April 8, 1978, the date when the Tribunal gave its award. In the circumstances, respondent No. 1 shall be entitled to recover costs from respondent No. 2, which is assessed at Rs. 300 (three hundred) only.