
(2012) 07 AHC CK 0087
In the Allahabad High Court
Case No : F.A.F.O. No. 2830 of 2012

Karan Singh and Others

APPELLANT

Vs

Ashok Kumar and Another

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 2 ALJ 416 : (2013) 1 AWC 927

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : S.D. Ojha, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—Heard learned counsel for the appellant and perused the record. This first appeal from order u/s 173 of the Motor Vehicles Act, 1988 has been filed challenging the validity and correctness of the award dated 17.3.2012 passed by the Motor Accident Claims Tribunal/ District Judge, Saharanpur in Motor Accident Claim Petition No. 164 of 2011 between Karan Singh and others v. Ashok Kumar and others.

2. By the aforesaid award the Tribunal has allowed the claim petition of the appellants ordering thus:

This claim petition is allowed in favour of the petitioners No. 1 and 2 as against the O.Ps. for the payment of compensation of Rs. 9,40,120 (Rs. Nine lacs forty thousand one hundred twenty only) alongwith interest @ 6% per annum from the date of filing of the petition till the date of actual payment. The petitioner No. 3 Sudhir Kumar will not get any compensation. The petitioner No. 1. Karan Singh and petitioner No. 2 Sohan Biri will get the whole amount of compensation and they will get equal share. The O.P. No. 2 National Insurance Company Ltd. is hereby directed to pay the awarded amount in the Court within 30 days from today through cheque/draft prepared in the name of M.A.C.T., Saharanpur.

80% of the amount of the share of petitioner No. 2 will be invested in maximum interest bearing Fixed Deposit in a Nationalized Bank for 10 years. However, yearly interest accruing on such Fixed Deposit will be withdrawn by her. She will get remaining 20% of the amount of her share by account payee cheque.

The Bank will not provide the facility of premature withdrawal loan on the Fixed Deposit without order of the Tribunal. The receipt of the Fixed Deposit shall be filed within 15 days of payment.

The petitioner No. 1 Karan Singh will get the amount of his share by account payee cheque.

3. The appellants have preferred this appeal praying that the award of the Tribunal dated 17.3.2012 may be modified in toto and the compensation may be awarded as claimed in the claim petition, i.e., Rs. 50,40,000.

4. The contention of learned counsel for the appellants is that the factum of accident was fully proved by the claimants by evidence which was not rebutted by the opposite parties, hence the view taken by the Tribunal by deciding the issues is contrary to the evidence and material on record. It is stated that the involvement of the vehicles as well as the factum of accident were admitted by the opposite parties and since there was no dispute about the involvement of the vehicles in the accident, the Tribunal has committed illegality in deducting 50% contributory negligence of deceased Km. Sudha, who was driving the Scooty on her left side of the road.

5. It is further argued that from perusal of the spot inspection report it is clearly proved that deceased Km. Sudha was driving Scooty on her left side of the road, hence there was no contributory negligence on her part but the Motor Accident Claims Tribunal relying on the statement of D.W. 1 Sri. Islam, driver of the offending vehicle, Truck No. HR-5/7867, who was not an independent witness, had granted only 6% interest on the awarded amount whereas now-a-days the Nationalized Banks are granting interest @ 9% per annum. According to the appellants, Tribunal has committed illegality in appreciating the evidence adduced on behalf of the claimants and has awarded compensation on the lower side and is liable to be enhanced.

6. In support of aforesaid submissions, learned counsel for the appellants has placed reliance upon paragraph 10 of the judgment rendered in A.P.S.R.T.C. and Another Vs. K. Hemalata and Others, , wherein the principle of composite and contributory negligence has been explained thus:

10. ...Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

No other point has been argued by the learned counsel for the appellants before us.

7. Though no site plan has been appended alongwith this appeal but it appears from the site plan filed in the court below produced by the learned counsel for the appellants before us that accident took place almost in the centre of the road. Km. Sudha (since deceased) was not driving her Scooty in rash or negligent manner and could have easily avoided the accident by taking evasive action as the accident had taken place in broad day light at about 10.30 a.m. and she could have seen the offending vehicle well in time. The evidence of P.W. 2. Rajbir also shows that it was a head-on-collision between the two vehicles.

8. According to the judgment rendered in A.P.S.R.T.C. (surpa) in such head-on-collision in broad day light between two vehicles the drivers of both the vehicles would be equally responsible for contributory negligence equally for rash and negligent and not only contributable to only one driver of the vehicle. For all the reasons stated above, we do not find any illegality or infirmity in the impugned award of the Tribunal, hence no interference is required by this Court.

The first appeal from order is accordingly, dismissed. No order as to costs.