
(1969) 05 PAT CK 0003
In the Patna High Court
Case No : M.A. No. 9 of 1967

Krisbnaji

APPELLANT

Vs

Subhadra Devi and Another

RESPONDENT

Date of Decision : 21-05-1969

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Motor Vehicles Act, 1988 — Section 110A, 110A(1)

Citation : (1969) ACJ 344 : (1969) PLJR 408

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : J.K. Prasad and Rajendra Kishore Parsad, for the Appellant;
Guneshwar Prasad, R.M. Misra and Rai Paras Nath, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This appeal has been riled under the provisions of section HOD of the Motor Vehicles Act by the owner of a truck, which had hit a boy named Hemant Kumar Tewari alias Pandit on the 27th April, 1964, at about 6 p. m. as a result of which the boy died on the same day. An application for compensation was filed by the mother of the deceased, who is Respondent No. 1. Respondent No. 2 is the insurance company which had insured the truck in question. The Tribunal has assessed the compensation at Rs. 10, 000/- which has been apportioned between the owner and the insurer. In view of the fact that the insurance policy had exonerated the insurer for a claim up to Rs. 5,000/- it has been held that the owner of the truck is liable to pay Rs. 5,000/- as compensation and the insurer the balance.

2. The case arose out of an application filed u/s 110 A of the Motor Vehicles Act by the mother of the deceased, on the allegation that while the boy, who was aged about 7-8 years, was standing in front of his house in Shri-Krishnanagar. Ranchi, he was run over by truck No. BRN 4148 belonging to the Appellant, and after the boy was removed to the Sadar Hospital in unconscious condition, he

died there. The Petitioner in the court below had claimed Rs. 20,000/- as compensation. The claim had been resisted by the owner of the truck as well as by the insurer. According to the owner's case, the driver of the truck was not at fault. It was contended that the vehicle was proceeding at a normal speed and all of a sudden the boy in question fell from a heap of earth, in between the front and the rear wheels of the truck as a result of which he suffered injuries from the rear wheels. It was contended that it was beyond the control of the driver to have averted the accident, which was due to the gross negligence of the boy. According to the insurance company, no compensation was payable at all, and in any view of the matter, the insurer was not liable for the first Rs. 5,000/- of the compensation payable. The claim of Rs. 20,000/- as compensation was also said to be excessive.

3. On a detailed consideration of the evidence on record, the Tribunal has held that the driver of the truck acted rashly while driving the truck in a narrow road and that he had knocked down the boy as alleged.

4. Learned Counsel for the Appellant has placed reliance on the evidence of three of the Applicant's witnesses, who are R. K. Tewary (A.W. 1(sic), father of the deceased Kailash Bihari Pandey (A.W. 2), a relation of A. W. 1 and Ashok Kumar Tewary (A.W. 3), son of A.W. 1. The main witnesses are A. Ws. 2 and 3, who have been examined as eye witnesses. Both these witnesses have given clear evidence that the truck had come in a high speed and having knocked down Hemant Kumar, it had gone away. The driver of the truck had not stopped after the accident. The evidence is that the driver had not blown the horn and that the boy was standing on the right side of the road, on some heap of earth. The road is said to be 15-16 feet wide there including drains on both sides. According to Learned Counsel for the Appellant, the boy must have fallen from the heap of earth in between the wheels of the truck and he must have been injured by pure accident for which the truck driver was not responsible. Learned Counsel for the Appellant has drawn my attention to certain contradictions between the evidence given by A.W. 2 in the present case and the evidence that he had given in the criminal case instituted against the truck driver. But there does not appear to be any real contradiction for which the evidence of A.W. 2 can be disbelieved. The evidence given by A. Ws. 2 and 3 appear to be clear and categorical as to how the event had taken place. The evidence given by the father (A. W. 1) is, however, hearsay as he had been informed about the occurrence by A.W. 2. Therefore, in my opinion, the facts have been clearly proved and the conclusion of the Tribunal in this case regarding the event is justified by the record. However, Learned Counsel for the Appellant has argued that the compensation ordered is too high and as the deceased was then reading in 4th class only, the compensation is excessive. It is difficult to accept this contention at this stage, as all the relevant matters in this connection have been taken into consideration by the Tribunal in assessing the compensation.

5. Lastly, it has been argued by Learned Counsel for the Appellant that the

application filed by the mother alone was not entertainable at all, in view of Section 110 A (1)(b) of the Motor Vehicles Act. According to this provision of law, an application for compensation can be filed by the "legal representatives of the deceased" where death had resulted from an accident. It is contended that it was not open to the mother alone to file the application for compensation. There does not appear to be any validity in this contention and it also appears that this point had not been taken before the Tribunal, apparently because of the provisions of Section 8 of the Hindu Succession Act (Act XXX of 1956). Moreover, even without taking this Act into consideration when no objection as to non-joinder had been taken before the Tribunal, this contention cannot be allowed at this stage, as no prejudice has been caused to the Appellant. The father of (he boy an Advocate, who was the Public Prosecutor, was examined as a witness and he has stated that he had claimed compensation of Rs. 20,000/- in this case. Therefore, whatever compensation is allowed, it will enure to the benefit of the legal representatives of the deceased. The technical point cannot succeed at this stage.

6. For the reasons given above, it must be held that the appeal is without any merit and it is, therefore, dismissed with costs payable to Respondent No. 1.