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(1984) 07 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 285 of 1978

Oriental Fire and General Insurance Co. Ltd. and Another — APPELLANT

Vs

Smt. Raj Rani and Others — RESPONDENT

Date of Decision : 19-07-1984

Acts Referred:

Citation : (1986) ACJ 310 : (1987) 61 CompCas 331

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; S.C. Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—In an accident between a truck HRK 6817 and a tractor HRR 976, Jagmohan, who was sitting on the tractor, was killed ; while Suraj Bhan, another person travelling on it, sustained injuries. This happened on May 2, 1972, at about 1.30 a.m. near village Jharot in the area of Police Station, Sonepat.

2. It was the finding of the Tribunal that the accident here had been caused entirely due to the rash and negligent driving of the truck driver. A sum of Rs. 50,000 was awarded as compensation to the mother, widow and minor children of Jagmohan, deceased, while Suraj Bhan, the injured claimant, was awarded Rs. 500 for the injuries suffered by him.

3. In seeking to challenge the compensation awarded to the claimants, Mr. L.M. Suri, counsel for the appellants, in the first instance, sought to question the finding of negligence recorded against the truck driver. In dealing with this matter, it deserves note that the accident between the truck and the tractor stands admitted by the truck driver. Mechanical breakdown of the truck was the plea put forth in defence.

4. The law is well-settled that whenever the defence of mechanical defect is raised, it has to be established, as a fact that the defect was such that despite

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reasonable care, it could not have been detected. The burden of proving that the accident was inevitable on account of the mechanical defect pleaded is upon the party pleading it. In order to succeed, the cause of the accident, and that it was inevitable, must be clearly proved with a view to satisfy the court that the accident could indeed not have been avoided. What was said in this case was that the front right spring and patta had broken all of a sudden and the truck went out of control and then the accident occurred. The truck driver, R.W.-l, Jagdish Rai, came into the witness box and deposed that the road was in a bad state of repair and the truck was heavily loaded. The spring of the truck broke on account of a jerk and the truck was then dragged towards its right hand side as it had swerved in that direction. It is significant to note that there is no evidence on record to show what steps, if any, had been taken by the driver or owner of the truck to see to it that the vehicle was kept in a proper state of repair. The truck being heavily loaded and being driven on a road in a bad state of repair without anything further cannot suffice to absolve the truck driver from blame.

5. There is no material on record in this case to suggest that there was any fault on the part of the driver of the tractor in this accident.

6. Having regard, therefore, to the totality of the circumstances of the case and the evidence on record, there is no escape from the conclusion that the Tribunal rightly found the cause of the accident to be the rash and negligent driving of the truck driver.

7. Turning to the issue relating to the quantum of compensation, the evidence on record shows that Jagmohan, deceased, was only 30 years of age at the time of his death. He died leaving behind his mother and also his widow and three minor children. The compensation payable has now to be assessed, keeping in view the principles laid down by the Full Bench in Lachhman Singh and Others Vs. Gurmit Kaur and Others, Considering the age and the circumstances of the deceased and the claimants, 16 would clearly be the appropriate multiplier to be adopted. As regards the loss suffered by the claimants, the evidence shows that Jagmohan was an agriculturist, who earned his livelihood by cultivating the land of his father, uncle and others. The Tribunal put his income to be Rs. 300 per month, which cannot but be considered to be on the low side, rather it would appear that this would be the figure of the loss suffered by the claimants on account of his death. The earnings of a person cultivating land of his father and other near relations must be taken to be somewhat higher than the wages of a mere agricultural labourer. So considered, an award of Rs. 50,000 as compensation to the claimants warrants no interference in appeal. Similarly, in the case of Suraj Bhan, the award of Rs. 500 for his injuries can by no means be described as excessive or unreasonable.

8. In the result, both the appeals and the revision petition are hereby dismissed with costs. Counsel''s fee Rs. 300 (one set only).

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