
(2004) 08 UK CK 0018
In the Uttarakhand High Court
Case No : F.A.F.O. No. 1116 of 2001

Shambhoo Lal and Others

APPELLANT

Vs

Tasleem Beg and Others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D, 92A

Citation : (2006) ACJ 666

Hon'ble Judges : P.C.Verma, J;Brahma Singh Verma, J

Bench : Division Bench

Advocate : B.S. Khanka, for the Appellant; Pankaj Miglani and T.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

P.C. Verma and B.S. Verma, JJ.—This is an appeal filed u/s 110-D of the Motor Vehicles Act, 1939 against the judgment and order dated 11.5.1990 passed by First Additional District Judge/Motor Accidents Claims Tribunal, Nainital in Motor Accident Claim Case No. 54 of 1989 u/s 110-A of the Motor Vehicles Act, 1939 and Motor Accident Claim Case No. 55 of 1989 u/s 92-A of the aforesaid Act for interim compensation, whereby both the claim petitions have been dismissed by the Tribunal.

2. Brief facts of the case are that the accident took place on 19.1.1989 when the deceased Dinesh s/o Shambhoo Lal was coming on cycle with Rajendra s/o Ram Kumar for harvesting fodder for the animals. When they reached at Budha Bridge at about 4.30 p.m., they were hit by truck No. URW 144 on account of rash and negligent driving of driver Abdul Rahf which was coming from Tanakpur. At the time of accident the deceased was on cycle on the left side of the road. After being hit by the truck the deceased fell down and was crushed by the wheels of the truck and he died on the spot. The father, brother and sisters of the deceased filed Motor Accident Claim Case Nos. 54 and No. 55 of 1989 for compensation. Claimants claimed Rs. 2,50,000 as compensation on the basis that claimants

suffered loss of Rs. 1,500 per month and also the mental agony due to the death of deceased Dinesh. The truck was insured with New India Genl. Ins. Co. Ltd., opposite party No. 3. The insurance has not been denied by the insurance company before the Motor Accidents Claims Tribunal. The insurer and the insured both filed their objections before the Tribunal. The defence was set up that accidentt did not take place by the truck as at the time of accident the truck in question was in Banbasa at the border of Nepal. The Motor Accidents Claims Tribunal framed the following issues:

(1) Whether the death of deceased was caused in the accident by truck bearing No. URW 144?

(2) Whether the truck in question was somewhere else at the time of accident as alleged by opposite party Nos. 1 and 2?

(3) Whether at the time of the accident the truck in question was being driven rashly and negligently as alleged by the claimants?

(4) To what amount of compensation, if any, and from which the claimants are entitled?

3. The Tribunal decided issue Nos. 1, 2 and 3 together and held that Rajendra Singh, who was an eyewitness of the accident, was not examined by the claimants in support of his case. The Tribunal also ignored the statement of Om Prakash who was also eyewitness on the ground that his name did not find place in the F.I.R. who stated in his statement that he had seen the accident and had noted the truck number. The Tribunal disbelieved the statement of Om Prakash only on the ground that he had stated in his statement that the number was written on the black plate with white letters, while the truck was a public carrier, therefore, the number plate of the truck was white with the black letters. Learned Tribunal doubted the statement of Om Prakash and ignored it. Though the Tribunal noticed that in his statement, Om Prakash had stated that he was at a distance of 150 200 steps and the statement was being recorded after a long time. There could be a slip regarding colour of the number plate and numbers written on it. Merely on this ground the statement of Om Prakash could not have been ignored. The truck was taken into custody by the police authorities after the F.I.R. was lodged regarding the said accident and death. The Tribunal did not deal with those papers. Tribunal also did not deal with the statement of Shambhoo Lal who is the father of the deceased and is one of the claimants to whom the entire story was narrated by Om Prakash who was the eyewitness. Paper No. 42-C is the F.I.R. on record, which clearly establishes the occurrence of accident and death of the deceased by the truck No. URW 144. The statement of Jaggu Lal was also examined who has also stated that Rajendra told him about the said occurrence and he proved the accident. Therefore, on appreciation of all this evidence, we hold that the finding recorded by the Tribunal that the alleged accident had occurred by truck No. URW 144 was not proved, is contrary to the evidence on record. Therefore, we set aside the said finding and we hold that on

the basis of this evidence, which is on record, the accident took place due to rash and negligent driving of the driver of truck No. URW 144. Therefore, the claimants were entitled to compensation from the insurance company as the truck in question was insured at the time of accident.

4. Now coming to the quantum of compensation to be paid to the claimants. Considering the claim raised by claimants we proceed to determine the compensation. The income of the deceased was Rs. 1,500 per month as stated in the claim petition. The age of the deceased was 20 years. In the statement it has come that his marriage had been settled and it was to be solemnized soon. Therefore, one-third would be the basis of calculating the compensation, i.e., Rs. 1,000 per month. As such, the compensation is to be determined taking into account the income of Rs. 1,000 per month. The father was the sole dependent on the deceased while dependency of his sisters goes to another brother also. It is admitted that the sisters of the deceased were not minors. Since the father and brother of the deceased are alive and the father is entitled for the compensation, therefore the sisters' dependency would be on the father and brother. It has come in the statement that the age of father of the deceased was 44 years. According to the Schedule, at this stage a multiplier of "15" is to be applied. Applying the multiplier of 15 at Rs. 1,000 per month it comes to Rs. 1,80,000.

5. Therefore, appeal is allowed accordingly. The impugned judgment and order dated 11.5.1990 is set aside. The claim petition is decreed for Rs. 1,80,000 as the compensation against the opposite party No. 3, New India Genl. Ins. Co. Ltd. Along with interest at the rate of 9 per cent per annum from the date of application till the date of final payment. No order as to costs.