

(2010) 08 AHC CK 0098
In the Allahabad High Court
Case No : F.A.F.O. No. 1316 of 2001

State of U.P. and Another

APPELLANT

Vs

Ram Nath and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) 08 AHC CK 0098

Hon'ble Judges : Shyam Shanker Tiwari, J; Satya Poot Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Shyam Shankar Tiwari, JJ.—The present appeal has been filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and order/award dated 10.8.2000, passed in Motor Accident Claim Case No. 278 of 1995 filed by the claimants-Respondents No. 1 to 4 against the Appellants and the Respondent Nos. 5, 6 and 7.

2. It appears that the claimants-Respondents No. 1 to 4 filed the aforesaid Claim Case, inter alia, praying for award of compensation on account of the death of Dinesh Kumar in an accident which took place on 10.11.1995 at about 10.00 p.m. wherein Jeep No. U.P.-32J-8510 collided with Three-Wheeler Loader No. M.P.-07/2145.

3. The case of the claimants-Respondents No. 1 to 4 was that the accident occurred on account of rash and negligent driving by the driver of the aforesaid Jeep No. U.P.-32J-8510 (hereinafter also referred to as "the vehicle in question").

4. The Appellants and the Respondent Nos. 5 and 6 filed their joint written statement, inter alia, alleging negligence on the part of the driver of the aforesaid Three Wheeler Loader No. MP-07/2145.

5. The Respondent No. 7, who was the driver of the vehicle in question (i.e., the

aforesaid Jeep) in his written statement asserted that there was no negligence on his part in driving the vehicle in question, and the accident took place on account of rash and negligent driving by the driver of the aforesaid Three Wheeler Loader.

6. The Tribunal framed four issues in the claim case.

Issue No. 1 was regarding factum of the accident having taken place on account of rash and negligent driving by the driver of the vehicle in question.

Issue No. 2 was regarding the factum of the accident having been taken place on account of rash and negligent driving by the driver of the aforesaid Three-Wheeler Loader No. M.P.-07/2145 or on account of contributory negligence on the part of the drivers of the aforesaid two vehicles.

Issue No. 3 was as to whether the driver of the vehicle in question and the driver of the aforesaid Three-Wheeler Loader were having valid licences on the date of the accident.

Issue No. 4 was as to whether the claimant-Respondent Nos. 1 to 4 were entitled to get any compensation, and if yes, the quantum of such compensation and against which opposite party in the claim petition.

The parties led oral and documentary evidence in support of their respective cases.

7. On a consideration of the material on record, the Tribunal recorded its findings on various issues.

As regards issue Nos. 1 and 2, the Tribunal held that the accident in question took place on account of rash and negligent driving by the driver of the vehicle in question resulting in injuries to the said Dinesh Kumar and his consequent death. The Tribunal further held that the accident did not occur on account of any rash and negligent driving on the part of the driver of the aforesaid Three-Wheeler Loader.

As regards issue No. 3, the Tribunal held that the drivers of the aforesaid two vehicles were having valid licences on the date of the accident.

As regards issue No. 4, the Tribunal held that the claimant-Respondent Nos. 1 to 4 were entitled to compensation amounting to Rs. 1,95,000 with interest.

Accordingly, the Tribunal passed the impugned award awarding Rs. 1,95,000 as compensation to the claimant-Respondent Nos. 1 to 4 with interest @ 10% per annum with effect from the date of filing of the claim petition till the date of payment.

The present appeal has been filed against the said award.

8. We have heard the learned standing counsel appearing for the Appellants, Sri Ram Singh, learned Counsel for the claimant-Respondent Nos. 1 to 4, Sri Arun

Kumar, learned Counsel appearing for the Respondent No. 6 and Sri P.K. Rao, learned Counsel appearing for the Respondent No. 7, and perused the record filed with the appeal.

9. Learned standing counsel submits that the present case was a case of contributory negligence, and the findings recorded by the Tribunal on issue Nos. 1 and 2 were erroneous.

10. We have considered the submissions made by the learned Counsel for the parties.

11. A perusal of the findings recorded on issue Nos. 1 and 2 by the Tribunal shows that the Tribunal has considered in detail the evidence on record including the statement of P.W. 2 (Jitendra), who was eyewitness of the accident in question. The Tribunal has also considered the statement of D.W. 1 (Constable Jagvir Singh), who was the driver of the vehicle in question. The Tribunal has also referred to the documentary evidence brought on record. On an analysis of the entire evidence available on record, the Tribunal has recorded its findings on issue Nos. 1 and 2.

12. No illegality or infirmity has been shown in the findings recorded by the Tribunal on the said issues.

13. We are in agreement with the analysis of evidence and the reasoning of the Tribunal in recording its findings on issue Nos. 1 and 2, and confirm the said findings recorded by the Tribunal.

14. The submissions made by the learned standing counsel cannot, therefore, be accepted.

15. We are also in agreement with the analysis of evidence and the reasoning of the Tribunal in recording its findings on issue Nos. 3 and 4, and confirm the findings recorded on the said issues.

16. In view of the above, the appeal filed by the Appellants lacks merits, and the same is liable to be dismissed. The appeal is accordingly dismissed.

However, on the facts and in the circumstances of the case, there will be no order as to costs.

The amount of Rs. 25,000 deposited by the Appellants, while filing the present appeal will be remitted to the Tribunal for being adjusted towards the amount payable by the Appellants under the impugned award.