
(1994) 09 AHC CK 0023
In the Allahabad High Court
Case No : F.A.F.O. No. 356 of 1994

Yogendra Pal Singh

APPELLANT

Vs

Motor Accidents Claims Tribunal and Others

RESPONDENT

Date of Decision : 23-09-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1995) 1 ACC 206 : (1996) ACJ 625

Hon'ble Judges : S.C. Mohapatra, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : V.N. Singh, for the Appellant; Anil Sharma, for the Respondent

Judgement

S.C. Mohapatra, J.—This is an appeal by the owner of the vehicle u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). On account of death of Mohd. Aqram aged about 27 years, the widow, minor children and parents filed an application for compensation claiming Rs. 9,80,200/-before the Tribunal. Their case is that on 18.10.1990 at about 4.00 p.m. while the deceased was going towards the grove in village Daipura truck No. UPN 6970 dashed against him and as a result of the accident he succumbed to the injuries. Thus, they have lost the dependency and are entitled to compensation. Appellant contested the claim on the ground that there was no accident and truck was not in a working order as its steering had failed at about 2.00 p.m. on the same day for which the driver left the vehicle on the road. Since the vehicle was found on the road it is wrongly been implicated, which caused the accident.

2. After considering the evidence on record Tribunal has found that the vehicle caused the accident as a result of which Mohd. Aqram sustained fatal injuries. He found that accident was on account of negligence of the driver of the Vehicle. Coming to the question of compensation he determined dependency at Rs. 7,200/-per annum and thus, determined the just compensation to be Rs. 1,14,000/- which he directed to the appellant to pay with proportionate costs and future and pendente lite interest at the rate of 14 per cent per annum. In

the ordering portion, however, Tribunal has stated that Rs. 1,14,000/- with proportionate costs along with future and pendente lite interest at the rate of 14 per cent per annum would be paid by the appellant. This is the grievance of the appellant. Mr. V.N. Singh, learned counsel for the appellant, submitted that Tribunal is not correct in its finding that the vehicle caused the accident and the driver was negligent in driving the vehicle. In any case the quantum of compensation determined is much on the higher side.

3. Mr. Anil Sharma, learned counsel for the claimants, on the other hand, submitted that the findings relating to negligence of the driver are unassailable and the compensation awarded is too low and it should have been enhanced. Taking into consideration the fact that in case this appeal is admitted claimants would not be able to get their compensation as awarded which may be deferred by grant of stay, we suggested that the appeal may be disposed of at this stage and parties have agreed to the same. Driver of the vehicle is the base witness to speak about the case made out by the owners. He has not been examined in this case. Thus, an adverse inference would be drawn. In case the driver would have been examined he would have spoken the truth which would be adverse to the owner. On the said ground we accept the finding of the Tribunal that there was negligence of the driver of the vehicle which caused the accident resulting in the fatal injuries of Mohd. Aqram.

4. Once there is negligence of the driver of the vehicle which resulted in the injuries on another, primarily the driver is liable for payment of compensation. Owner is vicariously liable to pay the same. Accordingly, the appellant cannot escape the liability to pay compensation in this case. Coming to the compensation it is to be found that the deceased has his widow, four children and parents, who were dependent on him. In the minimum this dependency is lost. There is no evidence that the dependants had to starve on account of low amount of earning of the deceased. Deceased was a weaver. He was earning the livelihood and maintaining the dependants with the same, apart from supplementing his income by cutting and supplying grass from the fields. In these circumstances, it can safely be concluded that the income was Rs. 25/- per day, in absence of better evidence of income. Thus, the income comes to Rs. 750/- per month. Taking into consideration as the earning member he might be spending something on his account as Rs. 150/- per month and the loss of the dependants would be Rs. 600/- p.m. which comes to Rs. 7,200/- annually. Deceased young man was aged about 27 years. The number of dependants is seven. He would have to maintain the children till their marriage and the parents till they are alive. In such circumstances determination of compensation of Rs. 1,14,000/- does not appear to be unreasonable. Therefore, appellant is liable to pay this amount of compensation to the claimants-respondents.

5. Coming to the question of interest payable we feel that the same requires interference. In case the amount is invested in bank it would carry interest at 10 per cent annually. Therefore, we reduce the rate of interest at 10 per cent from

14 per cent as awarded. A proper decree would not be of any assistance to the claimants as they require the amount immediately. Therefore, in case appellant deposits the amount before the Tribunal within three months from today we are inclined to give some benefit to him by reducing the interest to 6 per cent per annum. In case of failure, however, the interest of 10 per cent shall be paid from the date of the application till the date of the payment or realisation.

In the result, appeal is allowed in part. There shall be no order as to costs.