

Akbar Khan and ors Vs. Akbar Khan and ors

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Court : Delhi

Decided On : Nov-12-2014

Judge : Jayant Nath

Appellant : Akbar Khan and ors

Respondent : Akbar Khan and ors

Judgement :

\$~A-44. * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:12.11.2014 + MAC.APP. 826/2012 URMILA TYAGI & ORS Through Appellant Mr. Subhash Kamboj, Advocate versus AKBAR KHAN & ORS Through Respondent Ms. Manjusha Wadhwa, Advocate CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) 1. The present appeal has been filed seeking to impugn the Award dated 12.04.2012. The brief facts leading to filing of the claim petition by the appellants are that on 15.12.2005, the deceased Vijender Kumar Tyagi was going with Mr. Rinku i.e.Nitin Tyagi in a Maruti Zen Car. Near Akrabad Petrol Pump they were hit by a truck said to be driven rashly and negligently by respondent No.1. The occupants of the car were grievously injured. Later on, Mr. Vijender Kumar Tyagi succumbed to his injuries.

2. On the issue of negligence of respondent No.1, the driver of the offending truck, the tribunal noted the evidence of PW2 Mr. Nitin Tyagi who was an eye witness.

The tribunal also noted about the fact that a charge sheet has been filed against respondent No.1. Further the tribunal relying on the copy of the site plan placed on record noted that the deceased was driving his car just prior to the accident on the wrong side of the road, namely on the right side whereas he should have driven his car on the left side. This conclusion was based on the site plan placed on record. Hence, the tribunal concluded and held that the deceased and respondent No.1 were equally rash and negligent due to which the accident took place. On compensation, the tribunal awarded the following compensation:

3.

1. Loss of dependency 19,32,840/- 2. Loss of consortium 10,000/- 3. Loss of estate 10,000/- 4. Loss of love and affection 25,000/- 5. Funeral expenses 5,000/- 6. 19,82,840/- Total The tribunal held the deceased also negligent in driving the car, the respondent insurance company was held liable to pay half of the compensation amount i.e. Rs.9,91,420/-.

4. Learned counsel appearing for the appellant challenges the findings of the tribunal holding the deceased to be guilty of negligence and deducting 50% of the compensation amount payable by the respondent insurance company. It is averred that the issue of contributory negligence was never even raised by the insurance company in the written statement. It is further stated that the driver respondent No.1 has in his written statement never said that there was contributory negligence by the deceased. In fact the claim of the driver in the written statement was that the accident took place when the bus was stationary and parked inside the road.

5. Learned counsel for respondent No.3 insurance company has defended the Award stating that the site plan clearly shows contributory negligence of the parties.

6. We may look at the evidence of the parties. PW2 the eye witness Mr.Nitin Tyagi, in his affidavit by way of evidence has said that the driver of the truck respondent No.1 was driving the vehicle in a rash and negligent manner. He came on the front side i.e. he was coming from the opposite side and dashed the car of

the deceased. He has reiterated that the truck was driven rashly and negligently without taking care of the rules of traffic. In his cross examination, he denied that the truck was stationary on the kutchra road at the time of the accident. He was not cross examined on the issue of negligence of the deceased while driving his vehicle.

7. The police have also filed a copy of the charge sheet against respondent No.1 in the criminal court. The relevant portion of the English Translation of the charge sheet reads as follows:

....After the investigation, it was revealed that the accused at column No.3 with the speedy and rashly driven (sic.), suddenly, hit the Maruti due to which Maruti car was got broken and Rinku and Vijender Tyagi sustained injuries. After that Vijender died. From the investigation carried out till now and testimonies of witnesses, the offence punishable u/S279338/304A/427 of IPC has been registered against the accused Akbar Khan (Column No.3).

8. The tribunal has relied heavily on the site plan filed by the police. The site plan shows that the Maruti car driven by the deceased has gone off from the right side to the left side and the accident took place on the left side of the road indicating that the deceased has gone to the right side i.e. off the route as per the traffic rules for some time. However no police personnel was examined to show as to how the site plan was prepared. The basis of preparing the site plan and as to how the IO concluded that the deceased has gone off from the left side to the right side for a short while is not known. Anyhow, the accident took place on the left side which is the side on which the deceased should have run his vehicle. The offending vehicle i.e. the truck had no business to be driven on that side; as it was coming from the opposite side was clearly driven contrary to the traffic rules.

9. Reference may be had to the judgment of Supreme Court in the case of Pramod Kumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors (2002) 6 SCC455 where in para 8 the Supreme Court has held as follows:

8. We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory

negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

10. I may also note that the driver respondent No.1 has filed his written statement before the tribunal. In the written statement, he has said that his truck was parked inside the road in loaded condition as the petrol tank of the said vehicle was broken and tyre was burst and the said vehicle was parked inside on the kutch road. This version is in complete variation with the finding of the tribunal that the accident took place on the left side while both vehicles were in motion.

11. In the facts of the present case, keeping in view the evidence of PW2, charge sheet and the judgment of this Supreme Court in the case of Pramod Kumar Rasikbhai jhaveri v. Karmasey kunvargi tak and ors (supra)., in my opinion, there is enough evidence to show that the accident took place due to the rash and negligent driving by respondent No.1.

12. Accordingly, the respondent No.3 shall be liable to pay full compensation amount of Rs.19,82,840/- as awarded by the tribunal.

13. The balance amount as per the order of this Court along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till deposit be made before the Registrar General of this High Court within six weeks. On receipt of the said payment, 50% be released to the claimant in the same proportion and balance be kept in a Fixed Deposit for five years proportionately in the same proportion as provided in the Award with UCO Bank, Delhi High Court. The quarterly interest may be released to the claimants.

14. The appeal stands disposed of. JAYANT NATH, J NOVEMBER12 2014 raj