

Ramlayak Ram and ors. Vs. Umrawati Devi and ors.

Ramlayak Ram and ors. Vs. Umrawati Devi and ors.

SooperKanoon Citation : sooperkanoon.com/126367

Court : Patna

Decided On : Aug-28-2001

Judge : S.N. Pathak, J.

Appellant : Ramlayak Ram and ors.

Respondent : Umrawati Devi and ors.

Judgement :

S.N. Pathak, J.

1. This miscellaneous appeal is directed against the judgment passed by Mr. Ajay Srivastava, Additional District Judge-I, Rohtas at Sassaram-cum-Claims Tribunal, in M.V. Claim Case No. 36 of 1993. The claim of the appellants for compensation on account of the death of Dharamchandra Kumar, their son, was rejected by the Tribunal; and hence this appeal.

2. The relevant facts are that on 10th January, 1993 the deceased Dharamchandra Kumar, a student of Class IX, along with one Umesh Kumar, was proceeding on a bicycle from village Jagadeeh. When they reached the village Purnadeeh on the metalled road a truck bearing the registration No. BR 13H 9325 coming from the opposite direction dashed the cyclists as a result of which Dharamchandra Kumar died and his companion Umesh Kumar was thrown off the cycle. The deceased was earning a monthly income of Rs. 1,500/- by running a laundry. The applicants (appellants before this Court) had examined six witnesses.

But of whom RW. 1 was Ramlayak Ram, one of the claimants (father of the deceased). RW. 2 was Umesh Kumar, companion of the deceased. RW. 3 was Parvati Devi (mother of the deceased and one of the claimants). RW. 4 was Bodha Ram and RW. 5 was Shivshankar Prasad. RW. 6 was a formal witness who brought on record certain papers. Thus, P.Ws. 2, 4 and 5 were the so-called eyewitnesses to the alleged occurrence. The Trial Court disbelieved the evidence of RW. 4 on the ground that he was at a distance of half kilometre when the alleged occurrence took place and, therefore, he was not an eye-witness to the alleged occurrence. He has analysed the evidence of RW. 5 and opined that as per his admission he was 20-25 yards away when the alleged occurrence took place. So, he disbelieved the evidence of P.W. 5 also. He considered the evidence of remaining witnesses, R.W. 2 Umesh Kumar and compared his statement in Court with his statement in the Fardbeyan, Exh. 2 and opined that there was contradiction between the two statements and so, perhaps, the cycle received a jerk from the pressure of air emitted by the speeding truck throwing away the two occupants of the cycle. So, the Tribunal stated that the manner of occurrence was not proved. He further held that the deceased died not on account of clash with the truck, rather on account of the jerk from the air pressure of the truck. So, he rejected the claim of the appellants.

3. The moot question to be decided by the Tribunal was whether there was an accident involving the truck, in question, and the cycle on which the deceased and RW. 2 were riding. In this connection, the evidence of RW. 2 who was the prime eye-witness, is very much relevant. RW. 2 has said in chief in positive terms that when he was proceeding on cycle along with his companion, a truck coming from the opposite direction dashed the cycle which made the deceased fall in the field and he himself was also thrown away. The deceased died at the spot. In cross-examination at para 7 he said that he had seen the truck coming from the opposite direction from a distance of 20 yards. The truck did not blow its horn. The cycle was taken away from the main road to the path at the side of the truck. At para 8 he had stated that after being dashed, he was thrown away into the field at a distance of one lathi. The Tribunal interpreted these statements of RW. 2 to mean that the cyclists were thrown away by the pressure of the truck. I fail to understand the rationale of the Tribunal in interpreting the aforesaid statements of

RW. 2. It is mysterious as to how the Tribunal came to the conclusion that P.W. 2 and the deceased were thrown away from the road by mere air pressure of the truck. Learned Tribunal also considered the statement of P.W. 2 in his Fardbeyan, Exh. 2, where he said that on account of the high speed of the truck, the cycle had received a jhatka throwing the deceased and the informant P.W. 2. In the Fardbeyan he further said that Dharamchandra died at the spot. Thereafter, he raised alaram and several witnesses gathered and the truck was stopped by the persons who gathered.

4. The learned Tribunal interpreted the word jhatka used by P.W. 2 in his Fardbeyan as jerk received by the cycle on account of the air pressure. Thus, he has misinterpreted the word jhatka and he has also misinterpreted the meaning of word 'jerk'. Jerk and jhatka both will indicate some kind of contact between the truck and the cycle. It will never mean a jerk from the air pressure emitted by the speeding truck. Moreover, it is also improbable that on account of jerk of the air pressure of the truck, the cyclists will be thrown away and one of them will die. At best, if anybody is thrown off the cycle by the force of air, he will receive minor injuries. A person dying at the spot from a jerk will indicate that he had been knocked down by the speeding vehicle. The probability of deceased dying just by a jerk received from the air pressure is remote. The learned Tribunal, therefore, misintepreted the entire evidence on record. It is unfortunate that he failed to apply his judicial mind on the facts on record and came to a wrong finding rendering the alleged accident in which the deceased, son of the appellants, died. It is, therefore, held that Dharamchandra Kumar, the son of the appellants, died in the accident caused by the truck, in question, owned by Umrawati Devi. Admittedly, the concerned vehicle was insured with the respondent No. 3. Now the question is what amount of compensation should be paid to the claimants-appellants. There was evidence on behalf of claimants that the deceased was running a laundry and he was earning Rs. 1,500/- per month. So, his annual income would be Rs. 18,000/-. After deducting 1/3rd of this amount as the personal expenses to the deceased, the remaining shall be Rs. 12,000/-. The age of claimant No. 1, Ramlayak Ram, was 35 years when he was examined on 24th June, 1995. The age of mother of the deceased was 32 years on 15th July, 1995. The deceased was son of the claimants and for calculation of compensation the age of the

claimants and the deceased whichever is higher is to be taken into account. So, ages of the parents of the deceased has to be taken as base for calculation of compensation amount. As per the Second Schedule appended to the Motor Vehicles Act, 1988 in the year 1994, multiplier to be used for the persons of the age group of 30-35 is 17. The accident in this case occurred in the year 1993 and the Motor Vehicles Amendment Act, 1994, came into force in November, 1994, So, the liability of the owner and the Insurance Company was incurred on the date of occurrence. So, the Motor Vehicles Act, 1988, shall be applicable in deciding the compensation amount for the liability incurred under that Act. So, I fix 15 as the proper multiplier for calculating the compensation amount. So, if dependency amount of Rs. 12,000/- is multiplied by figure 15, total amount will come to Rs. 1,80,000/-. So, the amount of compensation is assessed at Rs. 1,80,000/-. To this amount we add the amount of funeral expenses of Rs. 2,000/-.

5. In the result, this miscellaneous appeal is allowed. It is directed that the Insurance Company (respondent No. 3) shall pay Rs. 1,82,000/- to the appellants. If the amount is not paid within three months from the date of this order, the claimants shall be entitled to interest at the rate of 6 per cent per annum till realisation.