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Court : Mumbai

Decided On : Nov-15-1984

Reported in : 1(1985)ACC525

Judge : Dharmadhikari and ;Vaze, JJ.

Appellant : Fatma and ors.

Respondent : Ergaburun Saumugam Naikar and ors.

Advocate for Pet/Ap. : Shri. Walawalkar

Judgement :

Dharmadhikari, J.

1. This is an appeal filed by the original claimants against the order passed by the District and Sessions Judge, and Ex. Office Member, Motor Accidents Claims Tribunal Satara dated 19th of April 1982 in M.S.C. petition no. 30 of 1979.

2. Shri Walawalkar the learned Counsel appearing for the appellants-contended before us that the learned Member of the Tribunal committed an error in coming to the conclusion that it was a case of contributory negligence which could be apportioned at 50 : 50. According to Shri Walawalkar the driver of the Chassis was solely responsible for the accident. He also contended that the compensation awarded by the Tribunal is wholly inadequate and it is also not based on any

principle.

3. With the assistance of the learned Counsel appearing for both sides we have gone through the entire evidence on record. We generally agree with the appreciation of the evidence as well as the finding of fact recorded by the learned Member of the Tribunal, so far as the contributory negligence is concerned. From the Evidence of Ahmed the cleaner of the truck of which the deceased was the driver it is quite clear that the chassis was coming from opposite direction and it had crossed the bridge. It is also clear that about 10 bullock carts containing sugar-cane were on the road. Inspite of this the driver of the truck the deceased proceeded further by overtaking the bullock carts. Shri Ahmed further admitted that the bullock-carts were on the both sides of the bridge and the chassis was behind the bullock-carts. If this evidence is read with the recitals in the panchnama Exh. 44, in our view the learned Member was wholly justified in coming to the conclusion that the accident took place because of the negligence of both drivers that is deceased Dastigir and driver of the chamis. Hence the learned Member of the Tribunal was also right in apportioning the contributory negligence equally. Therefore, we have no hesitation in confirming the said finding of the Tribunal.

4. So far as the quantum of compensation is concerned, in our opinion there is much substance in the contention of Shri Walawalkar. The learned Member of the Tribunal has taken as Rs. 400/- per month as amount of dependency, and on that basis has arrived at the compensation to the tune of Rs. 48,000/- which obviously means he had multiplied the said amount by applying multiplier of 10. It is also an admitted position that at the time of death the deceased was aged 34 years. Therefore the multiplier of 10 was wholly uncalled-for. On this case the correct multiplier would be 15. If on that basis the compensation amount is calculated then the claimants-appellants will be entitled to got Rs. 24,000/- more. The learned Member has also riot granted any compensation for the loss to the estate as well as loss of company etc. which in our view could safely be valued at Rs. 10,000/-. Therefore in addition to the amount of Rs. 48,000/- the claimants will be entitled to get additional amount of Rs. 34,000/-. On the basis of finding on issue of contributory negligence this amount have to be reduced or scale down to half. Thus the appellants-claimants are entitled to get Rs. 17,000/- over and above the

amount of Rs. 24,000/- already granted by the learned Member of the Tribunal. Thus the appeal is partly allowed. The figure of Rs. 24,000/- is substituted by Rs. 41,000/-. As a necessary consequence of this order about the deposit etc. passed by the learned Member of the Tribunal will also be for the whole amount of Rs. 41,000/-. The additional amount of Rs. 17,000/- will also carry interest at per annum from the date of application till the amount is deposited in court or realised. The decree will be obviously joint and several against all the opponents. On the amount of Rs. 17,000/- being realised or deposited the Tribunal will pass appropriate order for deposit of the said amount also in consonance with the order already passed in that behalf.

5. Hence the appeal is partly allowed. The appellants will be entitled to get costs in proportion to their claim allowed that is Rs. 17,000/- and the Respondents shali bear their costs.

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