

State of U.P. and Others Vs. Suresh Chandra

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Court : Allahabad

Decided On : Sep-22-1994

Reported in : 1995ACJ245; AIR1995All253

Judge : S.C. Mohapatra and ;D.K. Trivedi, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 2 (28) and 166; Workmen's Compensation Act; Minimum Wages Act

Appeal No. : F.A.F.O No. 994 of 1994

Appellant : State of U.P. and Others

Respondent : Suresh Chandra

Advocate for Def. : A.K. Saxena, Adv.

Advocate for Pet/Ap. : S.C.

Judgement :

ORDER

S.C. Mohapatra, J.

1. This is an appeal under S. 173 of the Motor Vehicles Act. Aggrieved by the award directing payment of compensation of Rs. 1,45,000/- to the injured respondent, undoubtedly on 8-5-1989 respondent was crushed by the road roller

belonging to the appellant, as a result of which he lost his right leg which had to be amputated. Alleging negligence of driver of the roller, respondent made a claim of Rs. 5,30,000/- as compensation. Tribunal after consideration of materials on record has awarded Rs. 1,45,000/- with interest at the rate of 12% per annum from the date of the application till date of realisation. Aggrieved by the same this appeal has been filed.

2. At the time of admission of this appeal respondent entered caveat. Both the parties are in possession of copies of relevant documents and accordingly, with their consent the appeal is finally heard and disposed of by this judgment.

3. Mr. Bisaria, learned Standing Counsel made a submission that road roller not being a motor vehicle, claim under the Motor Vehicles Act is not admissible and the application ought to have been rejected on that ground. In view of definition of the motor vehicle in the Act we have no doubt that road roller comes within the definition and accordingly this contention of appellant has no force. Mr. Bisaria, learned counsel for the appellant submitted that on account of negligence of the respondent the unfortunate accident happened and therefore, the appellant ought not to be liable for the injuries sustained by the respondent. From the records we are satisfied that the road roller is not being driven by the driver engaged for it. The nature of injuries are such that negligence cannot be attributed to the respondent. The nature of accident speaks for itself. Attracting the principles *res ipsa loquitur* we held that the driver of the road roller is squarely responsible for the unfortunate accident and appellant being employer and the owner of the vehicle has the liability to pay the compensation. Mr. Bisaria submitted that respondent is aged about 18 years and was employed not by the appellant but by a contractor, therefore, if any compensation is to be paid, the same is liable to be paid by the contractor and not by the appellant. As regards age, since there is no scope of employing a minor and there are some materials to show that the age is 18 years we come to the conclusion that injured respondent was aged 18 years. Even if the injured would not have been employed by the contractor appellant would have been liable to pay the amount since the accident was caused by its vehicle. The question would have been material if the claim would have been made under the Workmen's Compensation Act. Therefore, appellant cannot

escape liability in this case.

4. Mr. Bisaria submitted that the finding of the trial court is that loss of the appellant was Rs. 5,000/- only ought not to be accepted in this case and taking into consideration his own expenses the loss would be much less, since appellant has claimed that his monthly emoluments was Rs. 600/- at the rate of Rs. 20/- per day. In case income of the respondent is taken into consideration Mr. Bisaria may be correct. However, it is a common knowledge that under the Minimum Wages Act no labourer would be paid less than Rs. 25/-. In case at any time appellant would have raised a dispute Under the Labour Laws he would recover the balance amount. Therefore, we come to the conclusion that the monthly emoluments of the respondent was Rs. 750/ and on account of amputation of the leg he cannot further employ himself as a labourer to earn that amount. It is true that he can engage himself in other avocation of life even losing one leg and can earn some amount from that. However, in case of considering compensation granted to an injured labourer who has lost his leg these niceties ought not to be taken into account on hypothetical basis when there is no direct evidence that respondent is engaged in some avocation from which he is earning to maintain his life; We come to the conclusion that the loss of the respondent is at the rate of Rs. 750/- per month.

5. Mr. Bisaria submitted that in case claim would have been made under the Workmen's Compensation Act, claimant would have been entitled for compensation of about Rs. 85,000/- applying the factor as a labourer being aged 18 years having Rs. 750/- per month as wages. Therefore, merely by approaching to Tribunal under Motor Vehicles Act he could not be given more compensation than he would be entitled under another statute since both the statutes should be read together. In this aspect of the matter however, for the present case we are satisfied that the award of compensation of Rs. 85,000/- would be the just compensation. In case this amount is invested in some security appellant would be able to earn Rs. 750/- per month from out of the amount. This is also one of the methods of determining the compensation. We apply the same to the facts of this case.

6. In this case State has to pay the compensation. It is expected that a mighty power should take a liberal attitude towards the citizen specially when the wrong has been committed to him by one of its employee. Instead of settling the dispute out of court State has preferred to contest the legitimate claim. Respondent is deprived of the compensation for a long time therefore, he is entitled to interest on this amount. Interest calculated at the rate of 12% per annum would be the legitimate rate in this case. However, taking into consideration the fact that the State is to pay the money. In case payment of Rs. 1,00,000/- lump sum is made within three months, liability of the State would be completely discharged. In case the accommodation to State Government is not availed of for any reason the amount of Rs. 85,000/- awarded by us shall carry interest at the rate of 12% per annum from the date of the application till the date of payment.

7. Claimant is a member of the weaker section of the society being a labourer, court's protection is necessary so that the amount awarded is not made available to the claimant by third party agency or getting a lump sum by himself, he misapplies the same. In such circumstances we direct that State Government shall deposit the amount as directed by us before the tribunal and tribunal shall make arrangement so that the amount of Rs, 30,000/- is paid in cash to the claimant and the balance Rs. 70,000/- is kept in fixed deposit in a bank of the choice of the claimant wherefrom he would be able to draw the interest regularly for his maintenance and other expenses. If any further amount is necessary claimant can move the tribunal at any time explaining the necessities so that tribunal can pass an order directing the bank to release that amount which would be just and proper. While making arrangement for fixed deposit tribunal shall see that the term in the fixed deposit shall be made and the same shall not be encumbered in any manner by any person including the claimant. If further interest has to be paid by appellant in view of our conditional order, the same shall also be invested along with Rs. 70,000/-.

8. Subject to the aforesaid directions this appeal is allowed in part. There shall be no order as to costs.

9. Order accordingly.

