

Durga Prasad Vs. Pushpa

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Court : Allahabad

Decided On : Oct-21-1983

Reported in : 1(1984)ACC247

Judge : N.N. Mittal, J.

Appellant : Durga Prasad

Respondent : Pushpa

Judgement :

N.N. Mittal, J.

1. This is an appeal under Section 110-D of the Motor Vehicles Act. A claim petition was filed by the respondent claiming Rs. 60,000/- by way of compensation on account of the death of Baba Charan Das. It is alleged that on 6.2.1975 Baba Charan Das, at about 5.30 P.M. he was knocked down by tractor No. U.S.E. 2547 from behind as a result of which he received a number of injuries and ultimately died on 14.2.75. Baba Charan Das is said to have been engaged in business from which he was earning Rs. 2000/- per month. The claimants being his sons and daughters have claimed compensation/-. The claim petition was contested by the appellant and apart from some technical objections it was contended that Baba Charan Das was never knocked down by the tractor in question and in fact he fell down while walking with the aid of the stick and was hurt by his own stick which caused his death. It was also urged that the amount of compensation claimed was

excessive.

2. The claims tribunal came to the conclusion that the accident had taken place in the manner stated by the claimant and that he had been knocked down by the tractor in question. The tribunal also held that except for Smt. Pushpa one of the married daughters of the claimant no other claimant was dependent upon him and that she was entitled to Rs. 35,00/- only by way of compensation. These findings are being assailed before me.

3. At the very outset it is stated that the record of the court below is not available as the same has been burnt down in the fire in the record room of the District Judge, Bareilly. The only material available before the court is the award of the claims tribunal.

4. Having heard learned Counsel for the appellant I find no force in this appeal. Sri Rajendra Kumar, learned Counsel appearing for the appellant has urged that the claimant had failed to prove that Baba Charan Das had died on being knocked down by the appellant's tractor. The claimant has examined one Chatur Lal-P.W. 2 who has a shop opposite to the place where the accident had taken place. Guru Bachan Singh, P.W. 3 is also a witness who was, coming to the place of accident. Bal Kishan P.W. 1 is one of the claimant himself who had called by Guru Bachan Singh immediately after the accident and had taken the injured to the hospital. In the written statement the injuries caused to Baba Charan Das were not disputed. It is the manner in which the injury was caused which is disputed. While according to the claimant he was struck down from behind by the tractor, the defence was that he fell down himself due to the old age and the stick with the help of which he was walking caused injury. After taking this specific case it appears that the appellant traced himself and in his evidence he tried to prove that there was a yellow coloured tractor which had struck down the deceased a little while earlier to the arrival of his tractor a number of persons had collected. As the appellant also had been watching the injured the yellow colour tractor slipped away and the appellant was roped in this incident. In the written statement no such plea had been taken and if it was a fact that the appellant was not near the place of accident and had arrived there just by chance soon after the accident had taken place this plea

would have found place in the written statement. The claims tribunal had placed reliance in the statement of P.Ws. 2 & 3 who were eyewitnesses and I find nothing wrong in this. It is also difficult to believe that the old man would have been injured in the fall and received injuries in the process from the stick which he was carrying. In the circumstances, I cannot subscribe to the statement made by the appellant and hold that the findings of the claims tribunal are sound.

5. It is next urged that the amount of compensation is heavy and Smt. Pushpa was not dependent on the deceased. It is not seriously disputed that she was living with the deceased. Even though her children were getting education at Varanasi it is not improbable that she herself was living with her father and was being maintained by him. The deceased was admittedly carrying on business and was a cement stockist and had also established a flour mill and fodder cutting machine. In view of this the court below fixed the dependency of Smt. Pushpa at Rs. 100/- per month. Since the age of the deceased was 78 years and his life expectancy was taken as 35 months more a sum of Rs. 3500/- only was awarded by way of compensation. It is true that the claims tribunal has based this to some extent on conjectures than on any positive evidence yet a certain amount of speculation and conjecture becomes essential in cases of this type. The amount of compensation awarded is very small and does not appear to be unsupported by evidence or excessive in any manner. In these circumstances, I do not propose to interfere with the award.

6. In the result the appeal fails and is hereby dismissed. There will be no order as to costs as no one has contested the claim at the time of hearing.