

State of U.P. and ors. Vs. Prem Chand Jaiswal and anr.

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Court : Allahabad

Decided On : Sep-06-1994

Reported in : 1995ACJ776

Judge : S.C. Mohapatra and ;C.A. Rahim, JJ.

Appeal No. : F.A.F.O. No. 224 of 1993

Appellant : State of U.P. and ors.

Respondent : Prem Chand Jaiswal and anr.

Advocate for Def. : B.N. Misra, Adv.

Advocate for Pet/Ap. : Standing Counsel

Judgement :

C.A. Rahim, J.

1. This appeal has been preferred against the judgment and order of the Motor Accidents Claims Tribunal, Allahabad, dated 1.5.1992 in M.C.P. No. 268 of 1989.

2. The fact in short is that on 17.5.1989 at about 5/6 p.m. while the deceased Ajit Kumar Jaiswal was coming on the motor cycle as pillion rider, he was hit from behind by police truck No. UTY 9374 at Nairn Bridge. Ajit Kumar Jaiswal succumbed to the injuries on the same day at about 9.15 p.m. in the hospital. It

has been stated that the police truck was moving at a high speed and it was being driven rashly and negligently for which the accident was caused.

3. The defendants' contention was that there was no negligence on the part of the driver of the police vehicle. It was moving slowly at Naini Bridge while flock of buffaloes was passing on. It was their case that two buffaloes were at daggers drawn to each other and due to infighting the motor cycle, which passed the police truck, dashed against a pole in which Ajit Kumar Jaiswal received injuries and died later on. It was stated that the driver of the police truck stopped the vehicle 10 steps away and police truck was not in any way engaged in that accident.

4. Father of the deceased Prem Chand Jaiswal filed an application for awarding compensation for the accidental death of his son claiming Rs. 500,000/- in all on different counts. The learned Tribunal Judge awarded compensation to the extent of Rs. 2,38,000 in all. Being aggrieved by the said award of the learned Tribunal Judge this appeal has been preferred by the defendants on 2.9.1993, i.e., after four months of delivery of the judgment. So the defendants filed an application under Section 5 of the Limitation Act to condone the delay. Learned Standing Counsel has urged that the delay was caused to meet up the official procedures, to obtain sanction after receiving certified copy of order and there was no negligence on the part of the appellants. It appears from the submissions of the learned Standing Counsel that the file had to be sent to different offices and to its officers before the matter ultimately came to this court. In that process it appears that requisition for the certified copy of the judgment was made but action was taken after about a month. Moreover, it took about a month for preparation of memo of appeal. What appears to us is that the delay was caused due to presence of several knots in the official procedure involving several departments and its officers where the file moves at snail's pace for which the system is responsible rather than the persons concerned and for this we do not consider that the appeal should not be heard on merits. We have also considered that for the delay the old father of the deceased should be compensated. Accordingly, petition under Section 5 of the Limitation Act is allowed subject to the payment of the costs of Rs. 2,500/- to be borne by the appellants.

5. The contention of the appellants that no accident was caused with the police truck rather it was caused due to the collision of the motor cycle with the pole of the bridge due to infighting of the buffaloes was considered by the learned Tribunal Judge and found rightly that the contention was not true. The driver of the truck was examined as DW 1. He stated that there was flock of buffaloes on the bridge. The motor cycle passed his truck and he found two buffaloes engaged in fighting and due to that motor cycle dashed against the pole and the pillion rider got injuries. He stopped truck 10 steps away. Later on he also stated that the deceased was driving the same motor cycle.

6. Exh. Ka-4 is the notice sent by the driver constable Gorakh Nath Yadav in reply to a notice received from the informant. It is stated that Jitendra was driving the motor cycle and the accident occurred due to rash and negligent driving of the motor cycle. It was not stated on that occasion that collision was the effect of buffaloes' infighting nor it was stated that the flock of buffaloes was passing through Naini Bridge at that time.

7. On behalf of the claimants three PWs have been examined. Angoo Jaiswal, PW 1, has stated that Jitendra was driving the said motor cycle whereas the deceased Ajit Kumar Jaiswal was pillion rider. It was running at normal speed. The police truck was going in high speed rashly and negligently. It dashed the vehicle of Jitendra in which Ajit Kumar Jaiswal received multiple injuries. In cross-examination he stated that he did not find any animal passing on at that time. Prem Chand Jaiswal, PW 2, the claimant, has stated that Ajit Kumar Jaiswal was 19 years at that time. He was having a stationery shop and plastic business and earning Rs. 1,800/- per month. He did not see the accident. PW 3, Jitendra Kumar Jaiswal, eldest brother of the deceased, has also stated that he was driving the motor cycle whereas the deceased was pillion rider and the truck was running at a high speed. It was being driven rashly and negligently at Naini Bridge. The truck hit the motor cycle in which the deceased fell down on the road after receiving injuries. The witnesses denied that there was any buffalo at the place of the occurrence or that the collision took place due to the fighting of the buffaloes.

8. Learned Tribunal Judge relying on the evidence of PW 1 and PW 3 held that it was the driver who was responsible for the accident. He also discussed the contention of the driver in the light of the notice issued on its behalf where he put his signature and rejected the plea of the driver that it was caused due to rash and negligent driving of the motor cycle or due to infighting of the buffaloes. We have also considered the plea of driver constable and found that it was contradictory all along and the learned Tribunal Judge was right in his finding in that respect. We also accept the view of the learned Tribunal Judge in respect of finding about the cause of accident.

9. As regards quantum of compensation it appears that the learned Tribunal Judge awarded Rs. 50,000/- towards pain and agony, Rs. 5,000/- towards funeral expenses, Rs. 3,000/- towards treatment and Rs. 1,80,000/- towards loss of dependency. In view of the decision in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC), Hon'ble Supreme Court has decided that no compensation can be awarded to the parents for pain and agony suffered by them. With regard to the loss of dependency the evidence is that he was earning Rs. 1,800/- per month from his shops. As there was no corroboration of the statement of PW 2, the father of the deceased, the learned Tribunal accepted the amount of Rs. 1,500/- as income of the deceased. Even if we accept the contention of the learned Tribunal and deduct Rs. 500 as personal expenses of the deceased and use multiplier of 15 to the annual income of the deceased the figure comes to Rs. 1,80,000. We also found that the learned Tribunal Judge has not deducted any amount towards the risk of life. We have also considered that the deceased was unmarried and the father is the claimant. His son is dead but the business which he was running must not have been put to stop in toto though there was some loss to the estate. Considering all these aspects we find that if a consolidated amount of Rs. 1,50,000/- is allowed towards compensation it would meet the ends of justice. As regards the interest the learned Tribunal Judge fixed 15 per cent which is considered to be excessive. We find that it would be proper if the interest at the rate of 10 per cent per annum is imposed from the date of filing of the petition. We make it clear that no compensation for no fault liability has been awarded separately, which has been included in the consolidated amount awarded to the claimants. So the appellants are liable to pay Rs. 1,50,000/- towards

compensation to respondent No. 1 with interest at the rate of 10 per cent per annum to be paid from the date of filing the petition.

10. In the result, the appeal is allowed in part. There shall be no order as to costs.

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