

State of U.P. and ors. Vs. Shanti Devi and ors.

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Court : Allahabad

Decided On : Mar-21-1991

Reported in : 1992ACJ537

Judge : N.N. Mitral and ;G.D. Dubey, JJ.

Appeal No. : F.A.F.O. No. 247 of 1990

Appellant : State of U.P. and ors.

Respondent : Shanti Devi and ors.

Disposition : Appeal dismissed

Judgement :

N.N. Mithal, J.

1. This is an appeal filed by the State of U.P. under Section 173 of the Motor Vehicles Act against the award passed by the Motor Accidents Claims Tribunal, Dehradun. From the perusal of the award of the Motor Accidents Claims Tribunal, it appears that on 4.5.1986 at about 1.30 p.m. deceased was going on a bicycle on Kauwali Road where he was hit by vehicle No. UGA 4560 driven by appellant No. 3 on the right side of the road, coming from the opposite direction. The deceased was thrown up in the air and the motor vehicle dragged the cycle on which he was riding for several paces. The deceased fell to the ground and received serious

injuries and died on the spot.

2. The case of the appellant is that a bullock-cart came in front of the vehicle. As he was trying to overtake the same, the cyclist lost his balance and fell down and was crushed. The submission made by the appellant is that there was no negligence on the part of the driver and, therefore, the finding recorded in this behalf is erroneous.

3. From the award it appears that the appellants have admitted that the motor vehicle was trying to overtake the bullock-cart which was going in front of it. Therefore, the vehicle must have gone to its right side while overtaking the bullock-cart. Admittedly the cyclist was coming from the opposite direction. The possibility of the vehicle hitting the cyclist on his left side of the road becomes more. The case of the appellants that the cyclist fell before the vehicle as he had lost balance does not appear to be acceptable. The fact that his cycle was dragged for several feet after the accident shows that the vehicle was being driven at a fast speed. Another factor which is worth noticing is that if the motor vehicle had been moving with a slow speed it should have been possible for the driver to slow it down on seeing a cyclist coming from the other side, before attempting to overtake the bullock-cart. This he could not possibly do as the speed of the vehicle was too high and he had no other alternative but to try to overtake the bullock-cart, and this caused the accident. In view of this we are inclined to agree with the Tribunal that the accident was caused due to rash and negligent driving by the driver of the motor vehicle.

4. Coming to the question of compensation admittedly the deceased was employed in a factory and was getting Rs. 469/- per month from there. Apart from working in the factory it is alleged that he was also doing petty business from which his earning was Rs. 350/- per month. This part of the evidence has been partly relied upon by the Claims Tribunal, and in our opinion, for good reasons. The Tribunal has, therefore, fixed the income of the deceased at Rs. 750/- per month. Admittedly, after adjusting the amount which he must have been spending on himself the monthly contribution to the family by the deceased comes to Rs. 500/-. The deceased was of 45 years of age at the time of accident and taking

longevity to be 60 years he would have remained in employment until he attained the age of 60 years, i.e., for 15 years. The Tribunal has calculated the compensation for these 15 years at the rate of Rs. 500/- per month. Thus the total amount comes to Rs. 90,000/- out of which after making a deduction of 25 per cent on account of lump sum nature of payment, a sum of Rs. 67,500/- has been determined as compensation by the Tribunal.

5. This finding has been challenged by the appellant on the ground that there was no evidence regarding the additional income of the deceased. The deceased left behind his widow aged 35 years and two sons aged 14 and 7 years and a daughter of 10 years age. The elder son who was in Xth class had to leave studies on his father's death to assume the role of family's bread-earner. Claimants adduced evidence to prove that the deceased was engaged in a petty business in his spare time and augmented his income by Rs. 300/- to Rs. 350/- per month. This evidence has been believed by the Tribunal. In para 8 of the award after discussing the evidence the Tribunal determined his income as Rs. 750/- with which we are also inclined to agree. We find no illegality in the findings as to compensation. Accordingly, we confirm the finding of the Tribunal.

6. In the result we find no merit in the appeal. It is accordingly dismissed.