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Court : Allahabad

Decided On : Apr-01-1988

Reported in : 1(1989)ACC80

Judge : K.C. Agarwal and ;K.M. Birla, JJ.

Appellant : Radha

Respondent : Ashok Kumar and ors.

Judgement :

K.C. Agarwal, J.

1. This appeal Under Section 110-D of the Motor Vehicles Act has been preferred by Smt. Radha against the judgment and award of the Motor Accidents Claims Tribunal, Bijnor, dated May, 23, 1979, rejecting her claim petition.

2. Hoshiar Singh, the husband of Smt. Radha who was aged about 45 years, was watching the procession of Ravi Das Jayanti at about 5 p.m. on February 4, 1977, when Anis, driver of Truck No. UPN 1884 own by Ashok Kumar and Murari Singh, came driving rashly and negligently the aforesaid truck and ran over the same on Hoshiar Singh'. He died on the spot. Immediately at about 6-15 p m. a first information report was lodged mentioning the number of truck (UPN 1884) with which the accident was alleged to have taken place. Hoshiar Singh was employed in the sugar mills as Palledar.

3. The claim petition was contested by a joint written statement filed on behalf of Ashok kumar and Murari Singh. Murari Singh denied that he owned the aforesaid truck No. UPN 1884 and stated that he had been unnecessarily impleaded. They denied that the truck was not being rashly driven by Anis on that date. They also alleged that they were not owners. In the written statement it was alleged that the truck was loaded with sugar cane and was being driven slowly. When it reached near the place where Hoshiar Singh was standing, the deceased had a brief talk with Anis and after Anis left the place another truck No. UPY 717 came at the scene and knocked down Hoshiar Singh. The claim of the respondent was that the liability of truck No. UPN 1884 was being wrongly fastened on truck No. UPY 717.

4. Smt. Radha the appellant, examined four eye witnesses of the accident ; they were Jaimal Singh PW 1, Malhu Singh PW 2, Balbir Singh PW 3 and Mahabir Singh PW 4. Out of these witnesses Malhu Singh was a relation. These witnesses have been disbelieved by the Tribunal on flimsy and superficial grounds. The Tribunal found in consequential contradictions in the statements of one with the other and discarded the same. Malhu Singh, who had lodged the first information report, was disbelieved because he was in service of one Satya Prakash who was related to the deceased Hoshiar Singh. Contradictions about the place on which accident took place was held by the Tribunal to be sufficient to discard the eye witnesses. To us it appears that the Tribunal decided the claim petition treating it to be a criminal case. The approach of a Criminal Court in trying a case under Section 304-A of the Indian Penal Code is quite different while that which the Tribunal has to have while deciding a claim petition. In a claim petition the approach should be that of civil court, which is required in law to give its finding on probabilities and not on proving the offence beyond reasonable doubts.

5. Before we deal with the evidence led by Smt. Radha about the negligence of Anis driving Truck No. 1884, we may note that Ashok Kumar and Murari Singh had even denied the ownership of the aforesaid truck, Murari Singh lodged the first information report immediately after the accident at the police station giving the truck No. UPN 1884. Had the accident taken place with truck No. 717, one fails to understand why he should have not mentioned the said truck in the first information report instead of mentioning truck No. UPN 1884. There was no

suggestion that there was an attempt on the part of Malhu Singh to falsely implicate Anis. Mulha Singh had witnessed the entire occurrence' and so had Jaipal Singh PW 1 and Balbir Singh PW 3. There is a consistency in their statements about the manner in which the accident took place ; that consistency which inspires confidence in the truthfulness of their statements. The Tribunal found the injuries in the post mortem, since not being tallied totally with their statements, a ground sufficient to discard them. What they saw at the spot is not at all falsified by the accident. The witnesses may not use correct phraseology in describing the injuries or the exact manner in which the accident occurred. But that could not be a ground sufficient in itself to discard him and to disbelieve him. This has come in evidence that the procession of Ravi Das was being taken out in the evening and that a large number of people had collected at the spot. Anis could reasonably foresee the event and, as such, could foresee that he had not driven the vehicle carefully. He could have anticipated the accident and that is what he did not do. He appeared at the scene driving the vehicle rashly and negligently as a result of which the deceased Hoshiar Singh was struck and fell down. The injuries received by him were of serious nature. In the first information report lodged immediately after the accident not only the truck number but the name of the driver Anis had also been stated along with the names of some the witnesses.

6. For what we have said above that the accident resulted due to the negligent and rash driving of the truck No. 1884 driven by Anis and, as such, the respondents 1 and 2 were liable to pay damages. The Tribunal had assessed the compensation at Rs. 27,000/-. We are not satisfied with the submission of the appellant's counsel that the compensation assessed was inadequate or less than what the appellant is entitled to.

7. Consequently, we allow the appeal, set aside the judgment and award of the Tribunal and hold that the appellant would be entitled to get Rs. 25,000/- from the respondents Nos. 1 and 2 along with the interest at the rate of Rs. 6% per annum with effect from the date of the application.