

Subhan Ali and anr. Vs. Salim Ahmad and anr.

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SooperKanoon Citation : sooperkanoon.com/490607

Court : Allahabad

Decided On : Feb-16-2006

Reported in : 2006(3)AWC2521

Judge : N.K. Mehrotra and; R.P. Yadav, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140, 166 and 173; Evidence Act - Sections 155; ; Indian Penal Code, - Sections 279 and 304A

Appeal No. : F.A.F.O. No. 622 of 2002

Appellant : Subhan Ali and anr.

Respondent : Salim Ahmad and anr.

Advocate for Def. : Shakeel Ahmad Ansari;, Mohd. Sageer;, A.K. Gupta and; Ashish Kumar Srivastava, Adv.

Advocate for Pet/Ap. : Mohd. Arif Khan and; Mohiuddin Khan, Adv.

Disposition : Appeal allowed

Judgement :

R.P. Yadav, J.

1. This first appeal from order under Section 173 of the [Motor Vehicles Act, 1988](#) (hereinafter called the Act) for enhancement of compensation, is directed against

the judgment and award dated 22.2.2002, passed by Motor Accident Claims Tribunal/Special/Additional District Judge (E. C. Act), Hardoi partly allowing the claim petition filed by the appellants and awarding a sum of Rs. 58,000 as compensation with 8% per annum interest thereon.

2. Appellants are the parents of Shri Ateeq Ahmad, who was aged about 16 years and had gone for attending coaching on 29.11.2000. While returning to his house on his cycle, he was dashed by a Jeep U.P. 32 Z 5703 and consequently sustained injuries. He was taken to the Primary Health Centre, Kachauna, in serious condition, from where, he was shifted to Medical College, Lucknow, but he succumbed to the injuries there in the Medical College.

3. The appellants filed a claim petition under Section 166 of the Act, claiming compensation to the tune of Rs. 13,27,000. It was alleged that the accident took place due to rash and negligent driving of the said jeep.

4. Respondent No. 1 is the owner, who had been driving the vehicle at the relevant time. Respondent No. 2 is the Insurance company. Both of them, filed their written statements denying the liability for payment of compensation. The insurance company raised the legal pleas only in its written statement but the respondent No. 1 pleaded that the accident took place due to own negligence of the deceased. He further pleaded that he had been driving the vehicle very cautiously and carefully and there was no recklessness or negligence on his part.

5. The learned Tribunal framed relevant issues. The appellants examined two witnesses, namely, Subhan Ali P.W. 1 (appellant) and Vijay Kumar P.W. 2. No evidence was adduced by the respondents.

6. On a consideration of the entire evidence, the learned Tribunal came to the conclusion that the Jeep in question was duly insured with the respondent No. 2 and that respondent No. 1, Salim Ahmad, who had been driving the vehicle at the relevant time, was having a valid driving licence. It was further held that the negligence of the deceased is not proved by the respondent No. 1 by any iota of evidence. However, the learned Tribunal held that P.W. 2 Vijay Kumar, who claims himself to be an eye-witness of the accident, was not cited in the first information

report lodged by Subhan Ali appellant No. 1, on 30.1.2000, therefore, his testimony cannot be relied upon to hold that the respondent No. 1 had been driving the vehicle rashly and negligently at the time of the accident. He further held that in the absence of the rash and negligent driving on the part of the respondent No. 1, the appellants can be granted compensation under Section 140 of the Act on the basis of 'no fault liability' and accordingly, he allowed Rs. 50,000 as compensation and Rs. 8,000 as funeral expenses and loss of love and affection, etc. A total sum of Rs. 58,000 with 8% interest thereon from the date of filing of the claim petition was granted.

7. Appellants have come up with this appeal with the assertion that the learned Tribunal has granted highly inadequate amount of compensation.

8. It is submitted by the learned Counsel that there was evidence on record to prove that the accident was the result of the rash and negligent driving of the respondent No. 1 and that the deceased had his own income of more than Rs. 3,000 per month by working part time and doing the business of sale of milk.

9. On behalf of the respondents, the amount of compensation awarded by the Tribunal has been said to be Justified and quite adequate in the circumstances of the case.

10. Only two points arise for consideration in this appeal, first whether, was it proved from the material on record that the death of the deceased Ateeq Ahmad occurred due to rash and negligent driving of the vehicle. If this point is decided in affirmative, the second point will arise as to what if any was the income of the deceased?

11. Appellant No. 1, Subhan Ali P.W. 1 is not an eye-witness of the accident. He was examined to prove the income of the deceased. Whereas, P.W. 2 Vijay Kumar had given ocular testimony of the accident. He has categorically stated that the accident took place due to rash and negligent driving of the vehicle by the respondent No. 1. He has deposed that the deceased was coming on his cycle from the opposite direction, when the Jeep driven by respondent No. 1, rashly and negligently, hit the deceased, with the result, he sustained injuries. It is noteworthy

that the respondent No. 1 has been prosecuted under Section 279/304A, I.P.C. in Crime No. 208 of 2000. The Jeep was also seized by the police and it was released in favour of the respondent No. 1, subsequently, from the Court. The learned Tribunal has not accepted the evidence of this witness (P.W. 2) on the sole ground that he was not named as a witness in the F.I.R.

12. In our opinion, this is not a sufficient ground for rejection of evidence of a witness, specially, when he was subjected to lengthy and searching cross-examination and no material could be elicited from him to discredit his testimony. The respondent No. 1, who was driving the vehicle, had no courage to enter the witness box and deny the case pleaded by the appellants. It appears that the learned Tribunal has applied the standard of appreciation of evidence required for criminal trials, where the prosecution has to prove its case beyond all reasonable doubts, whereas in a motor accident petition that standard of proof is not required. Such petitions have to be decided on the basis of preponderance of probabilities and the circumstances emerging from the pleadings and the evidence led by the parties. The case pleaded by the respondent No. 1 in his written statement was that the deceased himself collided with the rear part of the jeep. If it was so, he should have come in the witness box to depose this fact. In absence of any evidence to the contrary, the rejection of the evidence of P.W. 2 Vijay Kumar by the learned Tribunal, was not Justified, Moreover, there was no material against this witness to dub him as an unreliable witness. It is true that he was the sole witness to prove the manner of accident, but law does not require any particular number of witness to prove a fact. One credible witness outweighs the testimony of number of witnesses. Law provides the cross-examination as one of the mode in which the credibility of a witness can be Impeached. But the cross-examination is not the only mode for impeaching the credit of a witness. It may also be done by other ways e.g. by giving independent evidence of the following facts as permitted and provided under Section 155 of the Evidence Act :

(a) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) By proof that the witness has been bribed, or has accepted the offer of bribe, or has received any other corrupt inducement to give the evidence;

(c) By proof of former statements of the witness inconsistent with any part of his evidence, which is liable to be contradicted ; and

(d) When a man has been prosecuted to rape....

In the present case neither any material could be elicited in the cross-examination to justify the rejection of the evidence of P.W. 2 nor any independent evidence was given to impeach his creditworthiness.

13. The only suggestion made to him was that he was bribed, but he emphatically denied it. The cross-examiner thereafter left the matter at that and did not pursue the cross-examination further. As such, there was no ground to disbelieve his testimony. In our opinion, the evidence of this witness has a ring of truth and he was a reliable witness.

14. We are, therefore, inclined to believe the evidence of Vijay Kumar P.W. 2 that the accident was the result of the rash and negligent driving of the jeep by the respondent No. 1.

15. On the next question of income of the deceased, we have the oral evidence of P.W. 1, who is the appellant No. 1 and the father of the deceased. There is no documentary material in support of Income of deceased. From the post-mortem report, the age of the deceased is proved to be about 16 years. He was a student, receiving education and he is said to have been doing some business of selling milk. He was the future of the appellants, who are aged between 50 and 55 years. They were expecting the deceased to be their stick in their lean days but all their hopes were belied with his end. There being no concrete material in support of proof of income of the deceased, we can reasonably take the notional income as his income, although this fact is not denied that he was having some income from selling milk. Taking the minimum of Rs. 15.000 per year as the income of the deceased which is also said to be notional income, and deducting 1/3 for the own maintenance of the deceased and lump-sum payment of the amount of

compensation, the annual amount, which the deceased would have spared for the appellants would have been around Rs. 10,000. Normal span of life of the appellants may be reasonably expected to be around 70 years and their age being between 50 and 55 years, we consider it just and proper to apply the multiplier of 16 and accordingly, we award a sum of Rs. 1,60,000 as compensation to the appellants. Rs. 8,000 for funeral expenses and for pain suffering, love and affection etc. has already been awarded by the Tribunal. The appellants are, therefore, entitled to a total sum of compensation of Rs. 1,68,000 as compensation.

16. The Jeep was already insured with the respondent No. 2 and the respondent No. 1, the owner-cum-driver, was having a valid driving licence as held by the Tribunal, therefore, the entire liability to make payment of compensation would be that of the Insurance Company. In the rate of interest awarded by the learned Tribunal, we do not feel, that any modification or change is required and the same appears to be reasonable keeping in view of the present bank rate of interest.

17. In view of the reasons indicated above, the appellants are entitled to a total compensation of Rs. 1,68,000 with interest @ 8% per annum.

18. In the result, the appeal is allowed. The award of the Tribunal is modified. It is directed that the Insurance Company, the respondent No. 2, shall pay a sum of Rs. 1,68,000 as compensation to the appellants with interest @ 8% per annum from the date of filing of the claim petition till the date of payment. No order for costs of this appeal.