

Vidya Devi and ors. Vs. Rajiv Kumar and ors.

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Court : Uttaranchal

Decided On : May-20-2004

Reported in : 2006ACJ1563

Judge : P.C. Verma, Actg. C.J. and; Rajesh Tandon, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 92A and 110A

Appeal No. : A.O. No. 275 of 2001

Appellant : Vidya Devi and ors.

Respondent : Rajiv Kumar and ors.

Advocate for Def. : Rajeev Mohan, Adv.

Advocate for Pet/Ap. : V.K. Bisht, Adv.

Disposition : Appeal allowed

Judgement :

P.C. Verma, Actg. C.J. and Rajesh Tandon, J.

1. This is an appeal against the judgment and award dated 19.4.1990 passed by Motor Accidents Claims Tribunal, Dehradun.

2. Brief facts giving rise to the present appeal are that the appellants-petitioners have filed a claim petition under Section 110-A of the [Motor Vehicles Act, 1939](#), for grant of compensation on account of death of Hari Singh in a motor vehicle accident. Petitioners have stated that on 16.9.1985 Hari Singh was carrying apples by truck No. UGA 8257 from Kathian to Dehradun on behalf of his employer Madho Ram. The truck was being driven by Mahavir Singh rashly and negligently due to which it met with accident resulting in the death of Hari Singh. Hari Singh was contributing Rs. 600 per month to the family for household expenses.

3. The opposite parties contested the claim petition and opposite party Nos. 1 and 2 have filed their respective written statements. The fact of accident has been admitted by the opposite parties but they denied that the accident occurred due to rash and negligent driving.

4. Insurance company, opposite party No. 3, has admitted that the truck in question was insured with it. Opposite party No. 3 has stated that the truck was insured only for transportation of goods but owner of the goods or his representatives were not allowed to travel by the truck.

5. On the pleadings of the parties, following issues were framed by the Tribunal:

(1) Whether any accident took place as is alleged in para 9 of the petition due to rash and negligent driving on the part of the driver of truck No. UGA 8257?

(2) Whether the insured has violated the terms and conditions of policy?

(3) Whether the petitioner is entitled to any compensation, if any, to what amount and from whom?

(4) What is the extent of the liability of the insurance company?

(5) Whether State Roadways is a necessary party as alleged in para 26 of the written statement of the opposite party No. 1?

(6) Relief?

6. In reply to the issue No. 1 the learned Tribunal has concluded that the accident did not take place due to rash and negligent driving of the truck. In reply to issue Nos. 2 and 4 Tribunal has assessed the amount of compensation as Rs. 91,600. The Tribunal has decided issue No. 5 in negative. The Claims Tribunal declined to award any compensation to the petitioners except Rs. 15,000 under Section 92-A of Motor Vehicles Act for no fault liability. Feeling aggrieved the present appeal has been filed by the claimants.

7. We have heard the learned Counsel for the parties at length and have perused the evidence on record.

8. The learned Tribunal has concluded that the truck in question was not being driven rashly and negligently but the accident took place under unavoidable circumstances. Respondent Nos. 1 and 2 in their written statement have stated that at the time of accident it was raining and the road was slippery. The road was narrow and there were turns. The accident took place due to failure of brakes. The learned Tribunal has based its findings on the statement on oath by Jagdeo Bijalwan, RW 3. This witness has deposed that the accident had taken place due to collapse of pulia. Thus the assertion of opposite parties in respect of the cause of accident is not acceptable. First they had taken the stand that accident took place due to rain, narrow road having turns and failure of brakes of the truck but at the same time they had taken shelter of the statement of an alleged eyewitness one Jagdeo Bijalwan who stated that accident was the result of collapse of a pulia. He also stated the speed of truck to be 12 to 14 kmph. The statement of the alleged eyewitness Jagdeo Bijalwan shows that he is tutored witness and has been purposefully introduced by the opposite parties. Thus the opposite parties respondents have failed to prove the actual cause of accident.

9. In the present case admittedly the passenger expired in the accident, therefore, it is not possible for the claimants to know what precisely led to the accident. Driver and owner of the vehicle have failed to discharge their burden. By applying the maxim *res ipsa loquitur* it is held that the incident speaks itself, i.e., the accident having been caused by rash and negligent driving. Thus we hold that the accident took place due to rash and negligent driving of the truck and thus the

petitioners are entitled to get compensation.

10. So far as the amount of compensation is concerned the learned Tribunal assessed the same for Rs. 91,600 on the basis of evidence on record. We are not inclined to interfere with the findings of the learned Claims Tribunal.

11. Appeal is accordingly allowed. The appellants are awarded a sum of Rs. 91,600 (rupees ninety-one thousand six hundred only) as compensation along with pendente lite and future interest at the rate of 9 per cent per annum apart from Rs. 15,000 which has already been awarded under no fault liability.

12. Parties shall bear their own costs.

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