

Parvati Devi and ors. Vs. Geeta Devi and ors.

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Court : Uttaranchal

Decided On : Apr-08-2005

Reported in : II(2006)ACC76

Judge : Rajesh Tandon and; J.C.S. Rawat, JJ.

Appellant : Parvati Devi and ors.

Respondent : Geeta Devi and ors.

Judgement :

J.C.S. Rawat, J.

1. This is an appeal against the judgment and award dated 16th October, 1991 passed by the Motor Accident Claims Tribunal, Pithoragarh.

2. Briefly stated, the facts giving rise to the present appeal are that the claimants/appellants filed a claim petition before the Motor Accident Claims Tribunal, Pithoragarh for grant of compensation on account of the death of Sri Ram Singh in a motor accident on 30th October, 1989 at about 5.30 p.m. at Lupra on Lohaghat-Pancheshwari Road. The claimants have alleged that at the time of the accident, the deceased was 23 years old. The deceased was on leave from his employment and was going to his home to celebrate 'Deepawali'. It has been stated in the claim petition that the deceased was earning a sum of Rs. 900 per month. The claimants have prayed for the compensation to the extent of Rs.

3,95,200. A First Information Report of the accident was lodged by Sri Mohan Singh.

3. The claim was contested by the respondent No. 2 Ganesh Singh and respondent No. 1, Geeta Agrawal. Opposite party No. 3 has also filed its written statement.

4. Respondent No. 2, Sri Ganesh Singh, who is the real brother of the deceased and driver of the vehicle in question in its written statement has denied the allegations made in the petition and has submitted that the vehicle in question was insured with the New India Assurance Company at the time of the accident and the Insurance Company is liable to pay compensation.

5. Opposite party No. 1, Geeta Devi in her written statement denied the averments made in the claim petition and asserted that since the vehicle in question was insured with the New India Assurance Company at the time of accident, she is not liable to pay compensation.

6. Opposite party No. 3, the Insurance Company also denied the allegations made in the petition and has submitted that the vehicle was a tanker and it only meant for carrying out petroleum product and not for passengers. The driver and owner of the vehicle flouted the terms and conditions of the insurance policy and as such the Insurance Company is not liable to pay any compensation.

7. On the pleadings of the parties, Claims Tribunal framed following issues:

(1) Whether the accident resulting in the death of Ram Singh took place due to rash and negligent driving of vehicle No. USE 7168 by its driver?

(2) Whether the driver Ganesh Singh, O.P. No. 2, acted beyond the scope of his employment and duty as alleged by O.P. No. 1, if so, its effect?

(3) Whether, the conditions of the insurance policy have been violated as alleged by the opposite party No. 3 If so, its effect?

(4) To what amount of compensation, if any, the claimants are entitled and from which of the opposite parties.

8. After considering the evidence on the record, the Claims Tribunal decided Issue No. 1 in favour of the petitioner and held that the accident took place due to vis-major and thus, the petitioners are entitled to get compensation under no fault a scheme under Section 140 of the M.V. Act.

Issue No. 2 as decided in negative and it has been held that the driver cannot be deemed to have acted beyond scope of his employment and duty.

Issue No. 3 was also decided against the Insurance Company and it has been held that the terms and conditions of the insurance policy have not been violated, b The Claims Tribunal awarded a sum of Rs. 25,000 under Section 140 of the M.V. Act along with pendente lite and future interest @ 6% per annum.

9. Feeling aggrieved, the claimants/petitioners have filed the present appeal. To prove the rash and negligent driving by the driver of the truck No. UHZ-2168, the claimant examined P.W. 2, Kishan Singh, who was the eye-witness of the c accident. P.W. 2 Kishan Singh stated that on the fateful day of occurrence, he was going to Village Bhakunda from Village Lupra along with Hari Datt and Bhagwan Singh. When they reached ahead Lupra, the tanker in question came from the side of the Lupra Ghat, which was being driven rashly and negligently spotting the approaching tanker, they stood by the side of the tanker, but the tanker hit the parapet and trapped all those three pedestrians. All the three died at the spot. The d dead body of Sri Ram Singh was also found lying there. In his cross-examination this witness refuted the suggestion that all the four deceased of this accident were actually travelling in the tanker. On the other hand, the opposite party No. 1, owner of the vehicle has examined the driver Ganesh Singh as D.W. 1. He stated that when he reached a little ahead of Village Lupra suddenly the steering of the truck failed as a result of which three pedestrians on the road came to be entrapped. The tanker e hit the parapet and fell down in the gorge. All the three pedestrians died there. He was saved as he jumped out the vehicle but his brother Ram Singh died in the accident.

10. The Insurance Company opposite party No. 3 also examined a witness namely J.K. Chaturvedi, who is said to be an investigator of the opposite party No. f 3. He deposed that he conducted an inquiry with regard to this accident. On the basis of

inquiry he deposed that at the time of accident six persons were travelling in the tanker including four who died in the aforesaid accident. This witness is not the eyewitness of the accident. His conclusion is based on hearsay and thus his statement has no relevance to the issue of rash and negligent driving. The learned Claims Tribunal relied upon the statement of the driver Ganesh Singh D.W. 1, who deposed ' that accident was caused due to failure of the steering wheel of the tanker. However, the truck driver was an interested witness. The respondents have not examined any technical expert to depose that the accident was caused due to failure of steering. In the absence of any reliable evidence in support of defence taken by the respondent, we have no option but to believe the statement of eye-witness Kishan n Singh, who deposed that the accident was caused due to rash and negligent driving by the truck driver. Thus, we are not in consonance with the findings of the Claims

Tribunal that the accident was vis-major and we hold that the accident was caused due to rash and negligent driving by the truck driver.

11. Issue Nos. 2 and 3 have not been disputed before us.

12. So far as the amount of compensation is concerned, the Claims Tribunal awarded a sum of Rs. 25,000 as compensation under Section 140 of the M.V. Act on the basis of 'No Fault Liability.

13. We modify the award and grant compensation. At the time of the accident the deceased was 23 years old and was a cleaner in the vehicle, which met with the accident. P.W. 1 Parwati Devi, widow of the deceased has stated on oath that her husband was getting Rs. 900 per month as salary. The opposite parties have not disputed this fact. Thus, we hold that the income of the deceased was Rs. 900 per month i.e. Rs. 10,800 per annum. 1/3rd of the said amount may be deducted for the own expenses of the deceased, if he would have been alive and thus the annual dependency of the claimants on the income of the deceased comes to Rs. 7,200.

14. At the time of the accident, the age of the deceased according to the petitioners was 23 years. Smt. Parwati Devi P.W. 1, widow of the deceased, has

stated his age to be 21 years on 15th April, 1991, when her statement was recorded before the Claims Tribunal. Thus, we hold the age of the deceased at the time of the accident to 23 or 24 years. Accordingly, a multiplier of '17' should have been applied for the age group of 20-25. Thus, by multiplying the annual dependency of the deceased i.e. Rs. 7,200 with 17, the compensation comes to Rs. 1,22,400. Besides this, the claimants are also entitled to get Rs. 2,000 for the expenses incurred in the last rite of the deceased. The petitioner No. 1, Smt. Parvati Devi is also entitled to get compensation for the loss of consortium to the extent of Rs. 2,500.

15. Thus, the claimants are entitled to get a total sum of Rs. 1,26,900. We round up this figure to the extent of Rs. 1,27,000.

16. The claimants are entitled to get a sum of Rs. 1,27,000 as compensation along with pendente lite and future interest at the rate of 9% (nine per cent) per annum. The petitioner No. 1 shall get half of the amount of compensation. Rest of the amount of compensation shall equally be divided in between the petitioner Nos. 2 and 3, the amount of the share of minor petitioner No. 3, shall be deposited in fixed deposit in some Nationalised Bank for the term he attains the age of majority.

17. Appeal is allowed. There will be no order as to costs. Award is modified accordingly.