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Court : Uttaranchal

Decided On : May-22-2004

Reported in : II(2005)ACC239

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

Appellant : Sulochana Devi and ors.

Respondent : ist Additional District Judge and ors.

Judgement :

P.C. Verma, A.C.J.

1. This is an appeal against the judgment and award dated 27th October, 1987 passed the Motor Accident Claims Tribunal, Dehradun.

2. Brief facts giving rise to the present appeal are that the appellants-petitioner have filed a claim petition under Section 110 of Motor Vehicles Act, for grant of compensation on account of death of Sri Mohan Lal Juyal in a motor vehicle accident, the petitioners have stated that on 14th December, 1984 at about 1.40 p.m. Sri Mohan Lal was standing at Saharanpur Chowuk, Dehradun and was waiting for some conveyance. The petitioners have alleged that one Trilok Singh with some pillion rider was riding motor cycle No. 17763 rashly and negligently. He was hit by the motor cycle being driven by Trilok Singh and the deceased fell down on the road. At the same time truck No. URF 9694 crushed the deceased under the wheels. It has been alleged that the truck was being driven rashly and

negligently by Sri Chandra Vir respondent No. 3. The petitioners have submitted that the deceased was retired Sub. Major or Honorary Captain from Army and was earning Rs. 1,100/- per month. The petitioners claimed a compensation of Rs. 4,20,480/- on account of death of Sri Mohan Lal Juyal in the accident.

3. The defendants have contested the claim petition. They have admitted the death of Sri Mohan Lal Juyal in motor vehicle accident but have denied that the accident took place due to rash and negligent driving by the rider of motor cycle or by the driver of the truck. They have also contended that the amount claimed as compensation is highly exaggerated.

4. On the pleadings of the parties the following issues were framed:

(1) Whether the accident, if any, took place due to negligent and rash driving of truck driver?

(2) Whether any accident took place due to rash and negligent driving of motor cycle by sepoy Trilok Singh, driver of O.P. No. 6 which resulted in the death of the deceased?

(3) Whether the respondent Nos. 1 to 6 are liable to pay compensation as claimed?

(4) Whether O.P. Nos. 5 and 6 have been wrongly impleaded and the petition is bad for mis-joinder of parties?

(5) To what amount of compensation, if any, are the claimants entitled to get and from which party?

5. In reply to issue Nos. 1 and 2 learned Claims Tribunal has held that the accident took place due to rash and negligent driving by the driver of the truck as well as by the rider of motorcycle and both issues were decided in favour of the petitioners and against the respondents.

6. Issue No. 4 was also decided against the respondents and it has been held that the petition is not bad for mis-joinder. The learned Claims Tribunal assessed the compensation for Rs. 18,000/- and awarded the same to the petitioners. Being

aggrieved by the impugned judgment and award the petitioners have preferred the present appeal.

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

8. The grievance of the appellants is that the Claims Tribunal has not assessed the compensation properly and has granted a meagre amount towards compensation.

9. In the appeal the learned Counsel for the appellants confined the arguments on the findings of the learned Tribunal regarding assessment of compensation. Smt. Sulochana Devi widow of the deceased and her witness Jagat Singh Rawat, have stated that the deceased was doing business of construction of houses on contract and was earning Rs. 1,100/- per month. Besides this he was also getting pension from the army. There is no documentary evidence regarding the income of the deceased from his construction business. However, it is established from the statements of Smt. Sulochana Devi and Sri Jagat Singh Rawat that the deceased was doing work of construction of houses on contract. In the absence of any documentary evidence the income of the deceased may be presumed to Rs. 700/- per month and after deducting Rs. 200/- for his own expenses, the pecuniary loss to the petitioners is assessed to Rs. 500/- per month or Rs. 6,000/- per annum. The deceased was 50 years of age at the time of his death hence, applying a multiplier of 10 the total pecuniary loss to the petitioners comes to the Rs. 60,000/-.

10. The deceased was getting pension and after his death his widow is getting family pension. Hence, there is no pecuniary loss to the petitioners on this count.

11. Petitioner No. 1 Smt. Sulochana Devi is also entitled to compensation for loss of consortium and respondent Nos. 2 and 3 are also entitled to get compensation for loss of love and affection of their father. A consolidated sum of Rs. 12,000/- on this count would meet the ends of justice.

13. The appeal is accordingly allowed. The appellants are awarded a sum of Rs. 72,000/- (Rs. Seventy two thousand only) as compensation along with pendente lite and future interest @ 9% per annum.

14. The parties shall bear their own costs.

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