

Rani Jha and ors. Vs. Commandant Csf and ors.

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Court : Jharkhand

Decided On : Jan-23-2003

Reported in : [2003(2)JCR421(Jhr)]

Judge : V.K. Gupta, C.J. and; R.K. Merathia, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166

Appeal No. : Appeal from Original Order No. 42 of 2000

Appellant : Rani Jha and ors.

Respondent : Commandant Csf and ors.

Advocate for Def. : Ram Kishore Prasad, ACGSC fo respondent No. 1 and; Alok Lal, Adv. for respondent No. 2

Advocate for Pet/Ap. : S.P. Sinha, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

1. This Misc. Appeal has been filed by the claimants, against the judgment dated 14.2.2000 passed by Shri D.D. Pandey, Third Additional District Judge, Dhanbad (Motor Vehicle Accident Claim Tribunal) in Title (M.V.) suit No. 82 of 1997 whereby and where under the claim of the claimants filed under Section 166 of the Motor

Vehicles Act has been dismissed,

2. The case of the claimants-appellants in short is as follows. On 24.5.1997 at about 10.30 p.m. Jitendra Jha (deceased) was going to Dhanbad Station. One Jeep bearing Registration No. B-H- R-1352, driven rashly and negligently dashed the said Jitendra Jha (deceased), causing multiple injuries, resulting his death. The monthly income of the deceased was Rs. 1500/- and he was aged about 27 years at the time of his death. The amount of compensation claimed was Rs. 4,50,000/- (Four Lakh Fifty Thousand). A case was registered as Dhanbad GRPPS Case No. 26 of 1997 dated 24.5.1997 under Section 279, 337, 338, 427 and 304, IPC. The aforesaid offending vehicle was insured with the United India Insurance Company Ltd. (Dhanbad).

3. The Insurance Company appeared in the case and filed a written statement, denying all the allegations of the claimant, but admitted that the vehicle in question was insured with it at the time of the alleged accident.

4. The defendant No. 1, the Commandant, CISF, Koyla Nagar, Dhanbad also appeared and filed its written statement, denying all the allegations made in the claim petition. However, it was contended that as the vehicle was Insured, the claimants are entitled to get compensation from the Insurance Company. It was also said that the defendant No. 1 was not the owner of the vehicle in question but was user of the vehicle.

5. The following issues were framed by the learned Court below :--

ISSUES

- '1. Is their any cause of action for the suit?
2. Is the suit maintainable in its present form?
3. Is the suit barred by limitation?
4. Is the suit bad for defect of parties?

5. Was the driver of the aforesaid jeep was driving the vehicle rashly and negligently and the deceased died due to fault of the driver of the jeep BHR 1352?

6. Is the plaintiff entitle for compensation and if so for what amount?'

6. With regard to the issue No. 5, the learned Tribunal held that there is no evidence on record that the driver of the vehicle in question was driving the vehicle rashly and negligently and the deceased died due to rash and negligent driving of the driver of the aforesaid Jeep, though there is evidence on record that the deceased died in the Motor Vehicle accident.

7. With regard to Issues No. 1, 2, 3 and 6 it was held that though there was cause of action for the suit and the same was maintainable otherwise but the claimants are not entitled for compensation because it has been not proved that the accident occurred due to rash and negligent driving of the driver of the Jeep in question.

8. With regard to Issue No. 4 the Tribunal found that though Rani Jha (widow of the deceased, Plaintiff No, 1), Amarendra Jha (minor son of the deceased, Plaintiff No. 2) and Janardan Jha (father of the deceased, Plaintiff No. 3) are parties, and PW 1 (plaintiff No. 1) has stated that her mother-in-law and father-in-law have become old and they are living in their native village, but the mother of the deceased is not a party in this Claim Petition and hence, it may be defect of party.

9. In our view the aforesaid finding on Issue No. 4 is vague and also incorrect. The claim cannot be defeated on such technicalities. If there was any irregularity or defect, the learned Court below ought to have given opportunity to cure the same as the widow-plaintiff No. 1 is a housewife whereas and plaintiff No. 2 is a minor son and plaintiff No. 3 was an old villager.

10. The main issue involved in this case revolves around the finding over Issue No. 5. Learned counsel for the claimants-appellants has relied on a decision of Supreme Court reported in 2002 (2) JCR 32 (SC), Kaushnuma Begum and Ors. v. New India Assurance Company Ltd. Para 17 of the said judgment represents as follows :--'In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr., 1987 (3) SCC 234, the question considered was regarding

the application of the rule in cases arising out of motor accidents. The observation made by ES Venkataramiah J. (as he then was) can profitably be extracted here :

'Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the vehicle accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in *Rylands V. Fletcher*. From the point of view of the pedestrian and roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover if the principle of social justice should have any meaning at all. In order to meet the some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability of damages arising out of motor vehicles accidents as a liability without fault.'

11. In view of the aforesaid judgment, the claim of appellants could not have been rejected on the ground that there was no evidence on record that the driver of the vehicle in question was driving the vehicle rashly and negligently. It is sufficient for the claimants to prove that the injury or death occurred in road accident.

12. In the facts and circumstances of this case we hold that the claim could not have been dismissed on the ground that the claimants could not prove that the driver of the vehicle in question was driving the jeep rashly and negligently. There is nothing to show that there was negligence on the part of the deceased.

13. In view of our aforesaid finding, it is necessary to remand the matter for consideration of other issues on the basis of the said finding given by us. The learned Tribunal will decide about the quantum of compensation and as to who is liable to pay the same and to what extent. The parties may lead evidence on these issues.

14. In the result the Appeal is allowed and the impugned judgment is set aside to the extent indicated above and the matter is remanded to the learned Tribunal for passing a fresh judgment as per the law. Let the lower Court records be sent down immediately.

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