

Smt. Chinta Devi Vs. Owner of Trekkar No. Br-17p-4141 and anr.

Smt. Chinta Devi Vs. Owner of Trekkar No. Br-17p-4141 and anr.

SooperKanoon Citation : sooperkanoon.com/517276

Court : Jharkhand

Decided On : Mar-21-2002

Reported in : II(2002)ACC442

Judge : M.Y. Eqbal and; H.S. Prasad, JJ.

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

Appeal No. : M.A. No. 118 of 2001

Appellant : Smt. Chinta Devi

Respondent : Owner of Trekkar No. Br-17p-4141 and anr.

Advocate for Def. : None

Advocate for Pet/Ap. : M.B. Lal, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

The Court

1. Heard the learned counsel appearing for the appellant. No one appears on behalf of the respondents.

2. This appeal of the claimant is directed against the Judgment and award dated 30.3.2001 passed by Sri B.K. Rai, 3rd Additional District Judge-cum-Motor Vehicle Claim Tribunal. Dhanbad in Title (M.V.) Suit No. 128/99 whereby he dismissed the claimant's application, holding that accident took place due to the negligence of the deceased and therefore, the claimants are not entitle to compensation.

3. The claimant's case is that the deceased Sushil Kumar Sinha was going on 8.4.1999 at 11.30 hours to Jharia along with Rajesh Kumar Gupta on the trekker in question, when the trekker in which the deceased was travelling reached near Nonia Basti. Bastakola, it was stopped in order to allow co-passenger to get down from the trekker. In the meantime, another trekker arrived from opposite direction and dashed Sushil Kumar who died on the spot. The Insurance Company appeared and took various defences including that the vehicles was not insured with the insurance company and the driver of the vehicle was rashly and negligently driving the vehicle. The Tribunal while deciding the issue regarding rash and negligent driving of the trekker recorded a finding that the driver stopped the trekker at Nonia Basti. Bastakola as co-passenger had to alight. The deceased has also got down and he was dashed by the trekker coming from opposite direction. According to the Tribunal, the deceased must have gone to the middle of the road after getting down from the trekker and was dashed by the trekker coming from the opposite direction. The conclusion arrived at by the Tribunal is merely based on assumption, conjecture and surmises. Tribunal fails to consider that, had the trekker been not stopped in the middle of the road, there would not have any possibility for the deceased to get down in the middle of the road.

4. Be that as it may, the facts remain the deceased was aged 26 years old while travelling in the trekker, met with the accident and died leaving behind mother and other dependents. In our opinion, the claimant deserves to be paid compensation for the loss of the life of the deceased and for his future prospect and earning. The matter needs reconsideration by the Tribunal.

5. We, therefore, allow this appeal and set aside the judgment passed by tribunal and remit the matter to the Tribunal to pass by a fresh judgment after giving opportunity of hearing to both the parties. Since the case is old one, the Tribunal

has to expedite the disposal of this case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com