

Mohd. Riazuddin @ Mohd. Riaz and ors. Vs. Narain Singh and ors.

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Court : Jharkhand

Decided On : Aug-28-2008

Reported in : 2009ACJ1871; [2008(4)JCR425(Jhr)]

Judge : M.Y. Eqbal and; D.K. Sinha, JJ.

Appellant : Mohd. Riazuddin @ Mohd. Riaz and ors.

Respondent : Narain Singh and ors.

Advocate for Def. : Mr. A.K. Lal, Mr. G.C. Jha

Judgement :

D.K. Sinha, J.

1. This miscellaneous appeal is directed against the award passed by the learned A.J.C.-VI-cum-Presiding Officer of Motor Accident Claims Tribunal, Ranchi in Compensation Case No. 128 of 2001 on 18.2.2006, whereby and whereunder, the learned Tribunal, by partly allowing the claim of the claimants/appellants, directed the opposite party No. 3/respondent No. 3 to pay a sum of Rs. 1,77,840/- only to them as against the claim of Rs. 3,60,000/- and interest thereon.

2. Brief fact of the case was that on 9.4.2001, while the deceased Jeyaul Haque @ Lala, an engine technician by profession, was repairing the gear box of the truck No. RJ-14-G-2685 parked on the National Highway near R.K. Motel at Chuttupalu,

another truck bearing registration No. BHN 5731, came rashly from behind and dashed against the said static truck No. RJ-14-G-2685 with the impact of which, the deceased Jeyaul Haque @ Lala who was repairing the gear box came under the wheels of the static truck No. RJ-14-G-2685. He was immediately removed to the Appolo Hospital where he succumbed in course of treatment on the same day. An FIR was instituted giving rise to Ormanjhi P.S. Case No. 4/01 for the alleged offence under Sections 279/337/338/307/304-(A) of the Indian Penal Code. After investigation, police submitted charge-sheet against the driver of the static truck No. RJ-14-G-2685. It was stated that the deceased Jeyual Haque @ Lala, at the relevant time of his death in motor accident, was aged about 19 years and was a skilled engine technician, having earning of Rs. 4,000/- per month. Appellants are the parents and younger minor brothers of the deceased who had been living on the earning of the deceased Jeyual Haque @ Lala and it was stated that due to his sudden death, the appellants have been deprived of not only their means of livelihood but also love and affection. A sum of Rs. 3,60,000/- was claimed by the claimants/appellants on the ground that his earning at the relevant time was Rs. 4,000/- per month but only a sum of Rs. 1,77,840/- was directed by the Claims Tribunal to be paid by the opposite party No. 3/respondent No. 3, who was the owner of the offending truck No. BHN 5731 which dashed the static truck.

3. By assailing the impugned award, learned Counsel Mr. Anand submitted that it was a case of composite negligence as the static truck No. RJ-14-G-2685 which had developed fault in its gear box was parked on the National Highway and the deceased with another was called in for repair of the truck but on account of sudden dash from behind, and its impact whereof, the deceased Jeyaul Haque @ Lala fell down and the wheels of the static truck moved forward and he came under the wheels which caused fatal in course of his treatment. In this manner, liability fixed only against the offending truck bearing registration No. BHN 5731 was not proper and appropriate which contributed for the negligence of the driver of the static truck No. RJ-14-G-2685, who had parked it on the National Highway without taking precautionary measures to watch and warn the vehicular traffic or by displaying the sign of caution or any other mode by putting boulders on the road. It was not the case of the respondent No. 1 that his truck was parked on the flank, at some distance from the National Highway so as to infer that abundant

precaution was taken by the driver of the truck No. RJ-14-G-2685 while repairing of its gear box was going on. Under the circumstances, it was appropriate and proper for the Tribunal to fix equal liability upon the owner of both the trucks as regards payment of compensation was concerned.

4. By raising the second point, Mr. Anand submitted that the amount of compensation as against the claim of the claimants/appellants was insufficient and inadequate, against the set norms of assessment. Learned Presiding Officer of the Tribunal while assessing the compensation amount entered into hyper-technical method by examining the notification of the Government dated 27.12.1995 in respect of notification of daily wages of semi-skilled labourer, which was fixed at Rs. 41/- per day and the same was revised by enhancing the daily wage to the extent of Rs. 75/- per day on 8.2.2005. Even contrary to the Act, the learned Presiding Officer assessed the earning of the deceased at Rs. 57/- per day ignoring the consistent evidence that the deceased was skilled technician/motor mechanic. Witnesses produced on behalf of the claimants/appellants including the owner of the garage where the deceased Jeyaul Haque @ Lala was employed were consistent that he was sent to the place of accident for repair of the gear box of the truck. A salary certificate of the deceased certifying his salary Rs. 4,000/- per month was produced before the Tribunal and the fact was corroborated by the owner of the garage in respect whereof was proved.

5. Heard Mr. A.K. Lal, learned Counsel for the respondent No. 1 and Mr. G.C. Jha, learned Counsel for the respondent No. 2 opposed the contention consistently by submitting that it was because of the rash and negligent driving of the offending truck No. BHN 5731 which dashed the static truck No. RJ-14-G-2685 as a result of the impact which Jeyaul Haque @ Lala sustained injuries by coming under the wheels of the static truck and he died in course of treatment, therefore, no liability can be fastened upon the owner of the truck No. RJ-14-G-2685. Yet, the salary certificate was proved with objection as no register or any other relevant books of account was submitted in support thereof.

6. Having regard to the facts and circumstances of the case, we find that the Tribunal has committed serious error of law in assessing compensation ignoring

the fact that the deceased Jeyaul Haque @ Lala was a skilled engine technician, a 19 years old boy at the relevant time of accident by the use of motor vehicle. As against the salary certificate of Rs. 4,000/- per month, the learned Presiding Officer of the Tribunal grossly erred by assessing his wage at the rate of Rs. 53/- per day. Accident, admittedly, took place on 9.4.2001 and even on that day, we can safely presume and assume that the daily wage of a skilled engine technician would certainly not be less than Rs. 100/- and therefore, we calculate the monthly income of Jeyaul Haque @ Lala (deceased) at Rs. 3,000/-. Upon deduction of 1/3rd being the personal expenses, his contribution towards family being dependency of the appellants comes to Rs. 24,000/-. We find that the claimants/appellants are the old father, mother and younger brothers of the deceased and therefore, in that case by using multiplier of 12 as against the annual dependency of the claimants/appellants comes to Rs. 2,88,000/- which, according to us, would be adequate compensation as against the claim of the claimants/appellants to the tune of Rs. 3,60,000/-. We further find that the Tribunal erred by not granting the statutory interest to the claimants, therefore, the amount of compensation as assessed by us to the tune of Rs. 2,88,000/- would carry interest at the rate of 8% (eight per cent) per annum since that the date of award of the Tribunal.

7. We are conscious about the argument advanced for the claimants/appellants that the offending truck No. BHN 5731 which came from behind and dashed the static truck No. RJ-14-G-2685 under repair, contributed in such accident by not taking abundant precaution which resulted into the death of the deceased which the impact of such dash who came under the wheels of the static truck while he was repairing the gear box.

8. Witnesses were consistent that the truck No. RJ-14-G-2685 was parked on the National Highway where repair work of the gear box was being undertaken by Jeyaul Haque @ Lala and no sign of caution was put on the road there by the driver of the static truck as a result of which the truck No. BHN 5731 being driven rashly and negligently dashed against the static truck with the impact whereof Jeyaul Haque @ Lala sustained fatal injuries and we find that the driver of the static truck contributed in such negligence. As the counsel for the respondent No.

1 (owner of the static truck) failed to show by evidence in the Tribunal that the truck No. RJ-14-G-2685 was parked on the flank of the National Highway taking abundant precaution to avoid any sort of accident, therefore, in the given situation, we observe that the drivers of both the vehicles were equally liable and therefore, equally contributed in such accident which resulted into death of Jeyaul Haque @ Lala, a motor engine technician, in his young age of 19 leaving behind the old parents and younger brothers to mourn his death. We, therefore, find and hold that the respondent No. 1 being the owner of the truck No. RJ-14-G-2685 and respondent No. 3 being the owner of truck No BHN 5731 carried vicarious liability for the act of their employees-drivers. We further find from the record that respondent No. 2 is the insurer as such liable to indemnify the insured owner respondent No. 1 of the truck No. RJ-14-G-2685 of half of its liability of Rs. 2,88,000/- with the interest at the rate of 8% since the award within six weeks of this order. We further observe that since the respondent No. 3 did not appear either before the Tribunal or before this Court in appeal in spite of process issued as well as substituted service by publication in the newspaper, calling upon him to appear, the claimants/appellants are at liberty to take recourse of law against him in accordance with law for the realization of the half of the aforesaid claim amount with interest as shown above since the date of award.

9. With such modification, this miscellaneous appeal is disposed of.

M.Y. Eqbal, J.

10. I agree.

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