

Rajesh Vs. Kultar Singh and ors.

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Court : Delhi

Decided On : Jan-04-1989

Reported in : 1(1989)ACC304

Judge : S.B. Wad, J.

Appellant : Rajesh

Respondent : Kultar Singh and ors.

Judgement :

S.B. Wad, J.

1. This is an appeal filed by Rajesh, son of Shri Ram Chand, who suffered an injury in an accident that took place on 16-4-1966. The evidence of eye witnesses and the evidence of the police as well as the Inspector of the vehicle shows that the accident had taken place on 16-4-1966 and that the petitioner had wrongly recorded the date of accident as 14-4-1966 in the claim petition. The Tribunal has considered the evidence of the eye witnesses, the police and the vehicle Inspector and held that the accident had taken place as claimed by the petitioner and had further come to the conclusion that the injuries received by the petitioner were the result of the said accident. Since the finding of the Tribunal is correct on the basis of the evidence referred to above, it has to be accepted that the accident took place on 16-4-1966. It is implicit in the finding of the Tribunal itself.

2. The Insurance Company in its written statement stated that on the relevant date of the accident, that is, 14-4-1966 no policy covering the vehicle in question, namely, DLI 1091 was taken out, nor was the certificate of insurance issued. That is, on the relevant date of the accident the vehicle in question was not insured. They denied their liability on this ground. The Tribunal awarded Rs. 2350/- as general and special damages in this case. The Tribunal, however, accepted the statement of the Insurance Company in the written statement that the vehicle was not insured with the Insurance Company on the date of accident, namely, 14-4-1966. The Tribunal there fore, directed that the amount of compensation was recoverable from respondent No. 1, the owner. The Respondent No. 1, the owner of the vehicle has filed the Cross Objections submitting that the vehicle was in fact registered with the Insurance Company on 16-4-1966, that is, the date of the accident.

3. It is rather strange that the Tribunal, after accepting the evidence of the eye witnesses, the police and the motor vehicle Inspector had still held that the date of accident was 14-4-1966 for the purposes of fixing the liability on the owner of the vehicle and excluded the Insurance Company from the liability. If there was any doubt as regards the date of the accident the Tribunal ought to have framed an issue on that question so that the evidence could be given by the parties before the Tribunal. The Tribunal has really fallen in an error on this account. In fact, the written statement of the Insurance Company only answers the statement made in the petition and although the Insurance Company cannot be faulted for taking 14-4-1966 as the date of accident, it was for the Tribunal to decide the actual date of accident and also to decide whether on that date the vehicle was insured with the Insurance Company. On the basis of the evidence on record, I have no hesitation in holding that the accident took place on 16-4-1966 and on that date the vehicle was insured with Respondent No. 3, the Insurance Company. I further hold that the Insurance Company, Respondent No. 3, is liable in this case to pay the compensation to the appellant.

4. That takes us to the quantum of compensation which the main ground in the appeal filed by the claimant. The claimant was the child often years at the time of accident. Naturally, therefore, the compensation cannot be decided in terms of

the dependency. The Tribunal has awarded Rs. 2,000/- as general damages. Considering the nature of injuries illustrated by the fact that nine teeth were broken at the site of the accident, the appellant was in the hospital for about three months and was under plaster for five weeks and that he had made a number of visits to the hospital thereafter would go to show that he had suffered quite a serious mental shock and suffering. In view of this, I raise the general damages to Rs. 10,000/-. The Tribunal has awarded Rs. 350/- towards the special damages on account of diet, traveling expenses etc. I do not find any reason to take a different view of the matter. The accident had taken place in 1966. The appellant will be entitled to 6 per cent simple interest on the increased amount of compensation from March, 1970 till date the actual payment is made by the Insurance Company. The appeal and the cross objections are allowed with costs. None has appeared for Respondent No. 1 for arguing the cross objections at the time of the hearing. Only the counsel for the appellant has appeared and argued the matter. The counsel's fee shall be Rs. 750/-.