

Naraln Devi and ors. Vs. Swaran Singh and ors.

Naraln Devi and ors. Vs. Swaran Singh and ors.

SooperKanoon Citation : sooperkanoon.com/698419

Court : Delhi

Decided On : Mar-29-1989

Reported in : II(1989)ACC116

Judge : S.B. Wad, J.

Appellant : Naraln Devi and ors.

Respondent : Swaran Singh and ors.

Judgement :

S.B. Wad, J.

1. In an accident, which took place on 6-1-69 Shri Duli Chand who was traveling in Tempo Vehicle No. DLL 3939 died due to impact caused by Truck No. PNF 4979 and also by Truck No. PNE 6300. It appears from the vehicle inspection report that the front truck and the tempo struck each other head on and the rear truck No. PNE 6300 got involved because of the impact. The Tribunal has found that there was composite negligence on the part of the front truck No. DLL 3939 and the rear truck No. PNE 6300. The Tribunal has awarded Rs. 15,440/- as compensation to the claimants. The claimants are the widow and five children and the father of the deceased.

2. The Oriental Fire & General Insurance Company with whom the rear truck No. PNE 6300 was insured as filed the cross-objection submitting that the Tribunal has

not properly judged the role of the said truck only because the driver of the truck was not examined and has held that there was composite negligence of both the truck. Counsel for the objector has submitted that the Tribunal ought to have apportioned the liability for the purpose of payment of compensation. I will dispose of the cross-objection first.

3. The cross-objector/insurance company cannot challenge the merits of the Award, the fact of the accident and the involvement of the vehicles. Whether the apportionment of liability can be made by the Court in a case of composite liability is the only question that can be argued by the Insurance Company. The finding is that it is not a case of contributory negligence, but of composite negligence. It is yet to be decided as to the proportion in which the two vehicles misconducted or offended. The law, therefore, is that the liability of the tortfeasors is joint and several. The Tribunal was quite right in recording the said finding. The cross-objection is, therefore, dismissed.

4. The main appeal is for enhancement of compensation. In the absence of the reliable documentary evidence the Tribunal has come to the conclusion that the income of the deceased was around Rs. 300/- per month. The deceased was working as an agent in the Rui Mandi. No evidence has been brought to my notice to take a different view of the matter. It is only a question of appreciation of evidence and I hold that the Tribunal was quite right on this score. However, the Tribunal has erred in taking Rs. 150/- per month as the family dependency. I have held in a number of cases that where the income is as low as Rs. 300/- per month, no amount should be deducted on account of personal expenses. This fact is further heightened by the fact that there were seven dependants of the deceased and he was required to support a big family. I, therefore, hold that the dependency in this case was Rs. 300/- per month. I agree with the Tribunal that the multiplier of 13 would be an appropriate multiplier in this case. I, therefore, direct that compensation of a sum of Rs. 46,800/- would be proper and just compensation. Ordered accordingly. The claimants would also be entitled to a simple interest @ 6% per annum from March 1970 till the date of payment.

5. The liability would be composite liability. However, considering the inspection report of the vehicle, I hold that the front truck No. DLL 3939 is responsible to the extent of 75% while the truck at the rear No. PNE 6300 was responsible for 25% of the accident. If the amount of compensation awarded along with interest is recovered from respondent No. 6 The Oriental Fire & General Insurance Company naturally they would be entitled to recover 75% of the amount from the owner of truck No. DLL 3939, viz. respondent No. 2.

6. The appeal is allowed. No order as to costs.

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