

Moorti Devi and ors. Vs. Mohan Lal and ors.

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Court : Delhi

Decided On : Apr-12-1989

Reported in : II(1989)ACC135

Judge : S.B. Wad, J.

Appellant : Moorti Devi and ors.

Respondent : Mohan Lal and ors.

Judgement :

S.B. Wad, J.

1. In an accident caused on 22-3-73 by truck No. PUF 1831, belonging to respondent No. 1, one Ram Dia, who was going on a cycle, was crushed under the Truck. The Tribunal found that it was a case of contributory negligence, the deceased cyclist being liable for 25% and the offending truck 75%. The Tribunal then made an Award of Rs. 18,630/- in favor of the claimants. The claimants have filed this appeal for enhancement of compensation. There is a cross-objection filed on behalf of the respondents praying that the cyclist should be held 100% responsible for the accident in which he died.

2. The claimants have examined two witnesses who are eye witnesses, viz. PW/4 Anand Singh and PW/5 Hari Singh. The respondents have not examined any witness, not even the driver of the offending vehicle. The relative position of the

cyclist and the truck at the time of the accident is fairly clear from the site plan produced as well the evidence of the witnesses. The deceased was coming from the side road and the truck was going on the main road. The accident took place almost in the middle of the road when the deceased was crossing the road along with two of his colleagues. I find that the Tribunal has correctly assessed the evidence and has come to the conclusion that the truck driver ought to have seen the cyclist from a distance and should have slowed down while the cyclist entering on the main road should have seen to his left and right in order to see whether any vehicle was coming. It is also an admitted fact that after the accident was caused to the cycle the bus could stop at a distance of about 25 yards from the place of impact. On these facts the Tribunal was right in holding that it was a case of contributory negligence in the proportion mentioned earlier. The appeal is dismissed to the extent that the appellants contend that the liability was entirely of the truck driver. The cross-objections are dismissed.

3. The deceased was working as a temporary hand in Swatantra Bharat Mills and was getting Rs. 160/- per month as his pay. He was a qualified fitter having a diploma from I.T.I. The claimants have claimed that apart from the salary the deceased was earning Rs. 240/- per month by carrying out private repairs of various types of engines. The Tribunal has disbelieved that the deceased was earning Rs. 240/- per month as an additional amount by repair of engines and has, therefore, accepted Rs. 160/- only as the monthly income of the deceased. Since the deceased was a qualified fitter holding diploma of the I.T.I., it can reasonably be believed that apart from the meagre salary of Rs. 160/- per month he was earning almost the same amount by working elsewhere. I, therefore, hold that the monthly income of the deceased at the time of the accident was Rs. 300/-. Assuming that he was spending a sum of Rs. 100/- on himself, the family dependency was Rs. 200/- per month. The Tribunal is quite right in taking 23 as the multiplier. Compensation then would work out to Rs. 55200/-. But in the proportion of negligence claimants would get Rs. 41400/-. The claimants would also be entitled to simple interest @ 9% per annum from the date of application till the date of payment. If the amount as awarded by the Tribunal has already had been paid by the Insurance Company, respondent No. 3, they would be entitled to credit for the said amount and proportionate interest.

The Insurance Company, respondent No. 3, shall draw up a cheque for the compensation amount as well as interest and deposit the same with the Registrar of this Court within two months from today. The Registrar shall disburse the amount after due notice to the parties.

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