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SooperKanoon Citation : sooperkanoon.com/755853

Court : Rajasthan

Decided On : Dec-03-1990

Reported in : 1991ACJ392

Judge : K.C. Agrawal, C.J.

Appeal No. : S.B. Civil Misc. Appeal No. 171 of 1986

Appellant : Ramu and anr.

Respondent : Rajasthan State Road Trans. Corpn. and anr.

Advocate for Def. : R.R.L. Gupta, Adv.

Advocate for Pet/Ap. : Gordhan Bardhar, Adv.

Disposition : Appeal dismissed

Judgement :

K.C. Agrawal, C.J.

1. Ramu and Goran are the parents of the deceased Sarwan, who have filed this appeal against the award dated 28.4.1986 passed by the Motor Accidents Claims Tribunal, Jaipur.

2. The case of the appellants is that the deceased Sarwan was killed in an accident with bus No. RRG 7604 of the Rajasthan State Road Transport

Corporation (for short 'Corporation') on 17.8.1981. The accident was due to rash and negligent driving by Mohan Lal, driver. Sarwan was only 17 years of age and was earning Rs. 25/- per day as a mason. Compensation in the sum of Rs. 4,95,250/- was claimed.

3. The Corporation and Mohan Lal, driver, contested the claim petition. Written statements of both these defendants were on the same line that the accident did not take place in the manner asserted by the claimants but it was due to the own fault of the deceased who appeared all of sudden before the running bus. In fact, the deceased himself dashed against the bus resulting in fatal injuries.

4. On behalf of the appellants, three witnesses, namely, Ranveer, Ramu and Dhannaram, were produced. They supported the claim of the appellants by saying that the accident took place due to rash and negligent driving. Mohan Lal, bus driver, also came in the witness-box to support the case of the Corporation. He stated that the bus had just left the last stoppage and it was not being rashly driven by him. The accident was due to the negligence of the deceased and not due to rash driving by him.

5. On the evidence of the parties, the Tribunal held that the accident occurred due to the deceased, who was not careful about the bus which was at a slow speed and that he dashed against the same. According to the Tribunal, the deceased had contributed to the accident by suddenly appearing at the scene of occurrence and the driver, Mohan Lal, could not be blamed squarely for the same. Learned Judge did not believe that the deceased had already crossed ½rd of the road at the time of the accident. In the opinion of the Tribunal, the accident was due to the composite (Sic. contributory) negligence of both of them.

6. Calculating damages, the Tribunal found that the appellants were entitled to receive Rs. 22,000/- from the Corporation and Mohan Lal, along with interest at the rate of 12 per cent per annum from the date of filing of the claim petition.

7. Learned counsel for the appellants urged that the Tribunal committed an error in finding that the accident did not take place exclusively and solely on account of the negligence of the driver, Mohan Lal. He submitted that the Tribunal erred in not

giving allowance to the age of the deceased, who was 17 years of age and urged that if the same would have been taken into consideration, the deceased could not have been held equally responsible for the accident.

8. I have gone through the statements of the witnesses and I am of the view that the accident did not occur due to the negligence of the bus driver. It may be true that in case of infant or a minor, the same standard of care cannot be required as in the case of a major. Manifestly, the adult test of the standard man cannot be applied in disregard of the young and inexperienced man. But, in the instant case, the deceased was 17 years of age and was also working as a mason. Consequently, he could not be said to be 'immature'. That being so, the deceased did not lack the adult's knowledge of the probable consequences of his acts or omissions and that he could not make* effective use of such knowledge, as he had. Therefore, it is not correct to say that the driver did not take care as much as expected from him, particularly at the time of minor's crossing the road. The yardstick of standard denoting the average person of the minor's stage of development was not applicable in this case. From the own evidence of the appellants, it was established that the accident occurred not due to the negligence of the bus driver but because of carelessness of the deceased while crossing the road.

9. On the point of compensation, learned counsel for the appellants urged that the deceased was earning Rs. 25/- per day and calculation of the same would have been much more than what has been awarded by the Tribunal. The accident occurred in 1981 and after considering the entire evidence, the Tribunal found that the deceased was earning Rs. 10/- per day. As such, the compensation awarded by the Tribunal does not suffer from any error.

10. For what has been discussed above, I find no force in this appeal and it deserves to be dismissed.

11. In the result, appeal fails and is dismissed without any order as to costs.