

Lokesh Vs. Arjun Lal

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Court : Rajasthan

Decided On : Jul-13-2009

Reported in : 2009(3)WLN338

Judge : N.P. Gupta, J.

Appellant : Lokesh

Respondent : Arjun Lal

Judgement :

N.P. Gupta, J.

1. These three appeals arise out of common judgment of the learned Motor Accident Claims Tribunal, Rajsamand dt. 30.11.1995 accepting three claim petitions, and making an award of Rs. 51,600/- in Claim Petition No. 274 filed by the claimant Fateh Lal while awarding a sum of Rs. 49,000/- in each of the Claim Petition Nos. 275 and 276 filed on behalf of Manoj and Lokesh respectively. Three claim petitions were consolidated and evidence was recorded in Claim Case No. 274.

2. The necessary facts are that on 15.03.1990 the three claimants being father and sons; Fateh Lal being father and other two being minor sons aged 8 years and 5 years respectively were traveling on motor cycle No. RRY-7745 from Molela to Khamnor. On way delinquent truck No. RJY-4993 driven by Arjun Lal was driven

negligently, and hit against motor cycle causing injuries to all the three claimants. On these facts claiming permanent disablement to have been suffered by each of the three claimants different amounts have been claimed under different heads. The owner and driver remained ex-parte and the insurer only filed reply pleading ignorance about factual aspect. However, it was pleaded that Fateh Lal who was driving the motor cycle did not know to drive motor cycle, nor he was having valid driving licence. It was also pleaded that looking to the truck coming from opposite side he got disturbed, and could not control the motor cycle, and himself fell down. Alternative plea of contributory negligence was also taken.

3. The learned Tribunal found that the place of accident was a single road, obviously, therefore, truck required larger space on the road, and when two vehicles are coming from opposite direction each driver is expected to leave enough space for the other one to pass. With this it was considered that Fateh Lal was holding accelerator from his right hand, and that hand hit the truck which shows that if each of the drivers would have left 3 to 6 inches more space then the accident would not have occurred. With this it was considered that there is no evidence on record to show that enough space was not available to the motor cyclist towards further left, motor cycle driver was also negligent to the extent of 20% and the truck driver was also held negligent to the extent of 80%. Then, deciding issue No. 2 compensation to which each of the claimant was entitled has been computed, and out of that 20% deduction has been made in each of the three claim petitions for contributory negligence, and then consolidated amount of Rs. 9600/- has been awarded as interest in claim No. 274 while consolidated amount of interest in the sum of Rs. 8600/- has been awarded in the other two claim petitions, and thus totaling up the amount, the award has been made. It is a different story that according to the calculation of the learned Tribunal, the claimant in Claim No. 274 was found entitled to a total amount of Rs. 52,000/-, still in the operative part award has been passed for Rs. 51,600/-.

4. Assailing the impugned awards it is contended by the learned Counsel for the appellant that the finding of the learned Tribunal on the question of contributory negligence is not sustainable, as from a look at Ex. 2 the site plan, it is more than clear that there was no further space available for the claimant to take the motor

cycle to further left, rather since there was a curve on the road the truck driver did not mind the motor cyclist, and hit him. At least to substantiate the plea of contributory negligence, the truck driver could have come in the witness box to depose about the fact situation available on the site, while no evidence in this regard has been led by any of the defendants. Even to the claimant PW 1 it has not been suggested in cross examination that there was any further space available towards the left to take the motor cycle in further left, while PW 1 had clearly deposed that he had already taken the motor cycle in the Kacha, and therefore, it cannot be said that the motor cyclist was guilty of any contributory negligence. It was then submitted that in any case so far the other two claimants Manoj and Lokesh are concerned, they cannot be said to have contributed in causing the accident, and therefore, no deduction on that count can be made in the compensation assessed to be payable to them. In the next place the award of consolidated amount of interest has been assailed, on the ground, that firstly there is no provision to award such consolidated amount of interest rather interest should have been awarded at any specified rate, and in the next place it is contended that it has wrongly been assumed by the learned Tribunal that the claimants had delayed the trial of the case.

5. Learned Counsel for the respondents, on the other hand, supported the impugned judgment.

6. I have gone through the record, and have considered the submissions.

7. I may first take up the question of contributory negligence. In my view, a look at Ex. 2 the site plan shows, that the truck was going from north to south while the motor cycle was going from south to north, and both the vehicles are lying at the place precisely where there is a curve, and the motor cycle is lying on the fencing of the field towards the west i.e. on its correct side. Obviously, it cannot be assumed that the width of road was that small as not to leave enough space for passage of motor cycle. It may reasonably be taken into account that even in single road there is space to provide passage even to two heavy vehicles coming from the opposite direction. As such, if the motor cycle was hit when it was moving on its correct side, and when it is positive case of the claimant that he had taken

the motor cycle in Kacha, in my view, the learned Tribunal was clearly in error in attributing any contributory negligence to the motor cyclist. The finding on issue No. 1 in this regard is required to be modified, and is accordingly modified, and issue No. 1 is decided completely in favour of the claimants, and it is held that accident was sole out-come of negligent driving of the truck driver only.

8. The obvious result of this is that the deduction made by learned Tribunal on the ground of contributory negligence in all the three cases is not sustainable. It is a different story that even if the finding on issue No. 1 would have been otherwise, there was no legal justification for making deduction in Claim Nos. 275 and 276, as qua the injured, it was a case of composite negligence, and not contributory one.

9. Since the over all assessment of compensation has not been challenged before me, I need not dilate on that aspect of the matter.

10. So far the award of consolidated amount of interest is concerned, though it is not required to be gone into with mathematical precision as to who was responsible for delay in disposal of the claim petition as there will be circumstances and circumstances. However, in the present case I have gone through the record, and find that it was the insurer who took more than 15 months in filing written statement while the claimants had led their evidence within 11 months. Thus, the honours are divided, and it cannot be said that the claimants are guilty of delaying the disposal of claim petition so as to entitled the Tribunal to consider it as an adverse circumstance. That being the position the award of consolidated amount of interest is set aside, and the amount of the compensation assessed, after setting aside the deduction on the count of contributory negligence, is directed to carry interest @ 9% from the date of claim petition till realisation.

11. Accordingly, the appeals are partly allowed. The deduction made by the learned Tribunal on the count of contributory negligence is set aside. Likewise, the consolidated amount of award of interest is also set aside, and instead the claimants are held entitled to interest @ 9% per annum on the amount of compensation from the date of claim petition till realisation. Parties shall bear their own costs.

