

The Fazilka Dabwali Transport Co. Pvt. Ltd.

Vs

Madan Lal

Civil Appeal No. 1996(N) of 1968

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ )

17.01.1977

JUDGMENT

RAY, C.J. –

1. This appeal is by certificate from the judgment dated November 9, 1967 of the Punjab and Haryana High Court in Letters Patent Appeal 301 of 1967.
2. The respondent is the father of the child who was injured in an accident.
3. The respondent claimed Rs. 25,000 on account of injuries received by his child. The left foot of the child was amputated as a result of the alleged accident. There was also an injury on the other foot.
4. There was an award of the Motor Accident Claims Tribunal. The award is dated March 29, 1964. The Tribunal came to the conclusion on the evidence there was negligence on the part of the driver. Two boys were going on a cycle. The driver of the bus in his evidence said that his bus was full and the speed was 10 to 15 miles per hour. The time of the accident was 11.00 a.m. The place was the bazar. There was rush in the bazar at that time. The road was 16 feet pucca. The side from which the boys came was a blind road. The boys were not visible to him before he entered the chowk. When he entered the chowk he noticed the boys coming on cycle. The further evidence of the driver is that he applied brakes and stopped his bus. The driver tried to save them and swered to his right. The front wheel of the cycle came under the wheel of the bus. The back wheel of the cycle was also damaged.
5. The Tribunal came to the conclusion that under the circumstances namely; the hour the place and the concourse of people, the speed of 10 to 15 miles per hour would not be considered low speed in the Bazar area. It was also contended before the Tribunal that two boys were riding the cycle and therefore there was contributory negligence. The Tribunal rightly repelled that suggestion by stating that the mere fact of double-riding by the boys did not contribute to the accident.
6. The Tribunal awarded Rs. 7000 as damages.
7. The respondent-father of the child preferred an appeal to the High Court. The Transport Company also preferred an appeal. The learned single Judge enhanced the compensation from Rs. 7000 to Rs. 12,000. The learned Single judge emphasised the amputation of one foot and injury to the other leg which gave a limp to the child because of the injury to the other leg which gave a limp to the child because of the injury. In our opinion the High Court rightly enhanced the claim.

8. Thereafter an appeal under Clause 10 of the Letters Patent was taken to the High Court. The High Court came to the conclusion that the Letters Patent Appeal was not competent. We are leaving this question open because we did not hear the parties on this point.

9. We heard the appeal only on merits. We are of opinion that the judgment of the learned single Judge is sound and correct.

10. For these reasons the appeal is dismissed. In view of the fact that the Transport Company was running the bus without insurance it is apparent that the Transport Company was also negligence there.

11. Taking into consideration the facts circumstances of the case we are of opinion that the Transport Company should pay the respondent costs of this appeal, which we assess at Rs. 2500.

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