

+ **MAC.APP.No.191/2009**Date of Decision: 24th November, 2009

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DTC & ORS

..... Appellants

Through : Ms. Avnish Ahlawat and
Mr. Nitish Kumar Singh,
Adv.

versus

VED PARKASH & ORS.

..... Respondents

Through : Mr. Naval Kishore Sharma,
Adv. for Mr. P.K. Sharma,
Adv.**CORAM :-****THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.5,30,000/- has been awarded to claimants/respondents No.1 and 2.

2. The accident dated 29th May, 2000 resulted in the death of Dharmender. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged 20 years at the time of the accident and the learned Tribunal computed the compensation of Rs.5,30,000/-.

4. The only ground urged by learned counsel for the appellants at the time of hearing of this appeal is that the deceased was contributory negligent for the accident and, therefore, the award amount should be reduced on account of contributory negligence. The deceased was sitting on the pillion of Motorcycle bearing No.DL-4S-K 5757 which was being driven by Harish. One more person Krishan Kumar was also sitting on the pillion. Krishan Kumar appeared in the witness box as PW-2 and deposed that the accident occurred due to rash and negligent driving of the offending DTC bus by its driver. The FIR was registered against bus driver who was prosecuted for the accident in question.

5. Though the driver of the bus appeared in the witness box as R1W1 but the learned Tribunal did not find the statement of the driver reliable.

6. There is no infirmity in the findings of the learned Tribunal. The finding of rash and negligent driving by the offending DTC bus by its driver is upheld.

7. The appeal is dismissed.

8. The appellant has deposited the entire award amount with the learned Tribunal out of which Rs.2,09,000/- has been released to respondent No.1 whereas the FDR for Rs.2,09,000/- in the name of respondent No.2 is lying with the learned Tribunal.

9. The learned Tribunal is directed to release the FDR to respondent No.2.

10. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.
11. The statutory amount of Rs.25,000/- be refunded to the appellant through counsel within four weeks.

J.R. MIDHA, J

NOVEMBER 24, 2009
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