

+ MAC.APP.No.162/2005Date of Decision: 1st December, 2009

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KARTARI DEVI & ANR. Appellants
Through : Mr. O.P. Mannie, Adv.

versus

SABU-R & ANR. Respondents
Through : Mr. Tiger Singh, 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 their claim petition has been dismissed.

2. The accident dated 23rd January, 1998 resulted in the death of Pawan Kumar. 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 was working as an electrician. It was claimed that the deceased was earning Rs.3,000/- per month. The learned counsel for the respondents do not dispute the death

of Pawan Kumar in a road accident by truck bearing No.89-D-81997-W-Shaktiman driven by respondent No.1 and owned by respondent No.2.

4. The learned Tribunal dismissed the claim petition on the ground that the difference between the age of appellant No.1 and the deceased is only four years.

5. The learned counsel for the appellants has placed on record the copy of the school leaving certificate of the deceased according to which the date of birth of the deceased was 4th January, 1978. The appellants have also placed on record the copy of the school leaving certificate of appellant No.2 according to which his date of birth is 2nd January, 1955. According to the said documents, the age of the deceased on the date of the accident was 20 years and the age of his father – appellant No.2 was 43 years. The appellants have also placed on record the copy of the ration card according to which the age of the deceased was 18 years and the age of his parents was 37 and 40 years respectively in the year 1996. According to the ration card, the age of the deceased at the time of his death would be 20 years and the age of his parents would be 39 and 42 years respectively. As such, there is a difference of 19 years and 22 years between the age of the deceased and his parents. The learned Tribunal has referred to copies of the election cards of the appellants. However, the said documents are not available in the Trial Court Record.

6. The finding of the learned Tribunal is contrary to the facts as to the age of the deceased and of his parents as given in the copy of the ration card which was filed by the appellants before the learned Tribunal. The age of the deceased and his father is established by the school leaving certificates, copies whereof were not been placed on record of the learned Tribunal but are placed on record before this Court. The appellants are present in the Court and they have also shown the original school leaving certificates of the deceased as well as of appellant No.2.

7. It has been time and again emphasized that proceedings under Section 168 of the Motor Vehicles Act are not in the nature of civil trial. Section 168 of the Motor Vehicles Act clearly provides that the learned Tribunal shall conduct an inquiry. Section 169 of the Motor Vehicles Act further provides that the inquiry shall be summary in nature and the Tribunal shall follow such summary procedure as it deems fit. Sections 168 and 169 of the Motor Vehicles Act cast a duty on the Claims Tribunal to ascertain the truth in such manner as it think fit. If the Tribunal had any doubt about the age of the deceased or his parents, the Tribunal should have conducted an inquiry to ascertain the truth. However, instead of ascertaining the truth, the learned Tribunal washed off its hands by dismissing the claim petition which is contrary to the spirit of Sections 168 and 169 of the Motor Vehicles Act.

8. Considering that the accident is admitted, death of Pawan Kumar is admitted and the learned Tribunal has also held that the accident occurred due to the rash and negligent driving of the offending vehicle by respondent No.1, the dismissal of the claim petition has caused grave injustice to the appellants.

9. In the facts and circumstances of this case, the finding of the learned Tribunal with respect to the age of the deceased and the age of the parents and their relationship is set aside. The impugned award is set aside and the case is remanded back to the learned Tribunal who is directed to conduct an inquiry in accordance with law. The Tribunal is also advised to be careful in future.

10. Noting that the accident relates to the year 1998 and the factum of the accident and death of Pawan Kumar in the accident is not disputed and the Tribunal has already given the finding with respect to the rash and negligent driving of the offending vehicle, the learned Tribunal is directed to complete the inquiry within two months.

11. The appellants are given liberty to place on record the copies of the school leaving certificates of the deceased as well as of appellant No.2 before the learned Tribunal.

12. The parties are directed to appear before the learned Tribunal on 21st December, 2009.

13. The LCR be returned back forthwith through a special messenger.

14. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

DECEMBER 01, 2009

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