Supreme Court of India
Meera Devi & Anr vs H.R.T.C & Ors on 10 March, 1947
Author: N.V.Ramana
Bench: P Sathasivam, Ranjan Gogoi, N.V. Ramana

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5764 OF 2008

MEERA DEVI & ANR. ... APPELLANTS

VERSUS

H.R.T.C. & ORS. ... RESPONDENTS

J U D G M E N T

N.V.RAMANA,J.

1. The appellants by way of this appeal has impugned the judgment dated 27.03.2006 passed by the High Court of Himachal Pradesh at Shimla in FAO No. 441 of 2003 whereby the amount of compensation awarded by the Motor Accident Claims Tribunal, Mandi (for short, 'the Tribunal') in Claim Petition No. 58 of 2001 was reduced from Rs.3,17,200/- to Rs.1,58,600/- on the ground of contributory negligence.

2. On 31.05.2001, the deceased Upamnyu, who was the only son of the appellants herein, was driving scooter having registration No. HP- 28-215 from Mandi side towards Sarkaghat. When he reached at a place known as Nabahi, an accident took place between the said scooter and bus having registration No. HP-28-715, which was being driven by respondent No. 3 herein, namely, Gian Chand, driver in H.R.T.C., Region Sakarghat, Mandi, H.P. Since the deceased got injured in that accident, he was taken to C.HC. Sakarghat and thereafter when he was being taken to PGI Chandigarh, he died on his way.

3. The appellants claimed that the said accident had occurred due to rash and negligent driving of respondent No. 3 herein, who was driving the bus in high speed. It was averred by the appellants that the deceased, who was a student, was also doing agriculture and household work earning Rs.4,000/- per month and they being parents of the deceased were dependant upon him. With these averments, the appellants filed a claim petition under Section 166 of The Motor Vehicles Act, 1988 (for short, 'the said Act') on 21.07.2001 and sought compensation to the tune of Rs.15 lakhs. The respondents contested the claim of the appellants on the ground that respondent No. 3 on seeing the deceased coming on scooter from the opposite side at a high speed had stopped the bus and when the scooter collided with the bumper of the bus, the bus was in a stationary condition.

4. The Tribunal vide award dated 01.07.20013, while relying on the testimony of PW-3 Lekh Ram and other evidence placed on record, returned a categorical finding that the said accident has taken place due to rash and negligent driving of the driver of the bus as the bus driver did not blow the horn at the site where there is a curve and, thus, awarded compensation of Rs.3,17,200/- along with

interest.

5. Against the aforesaid judgment of the Tribunal, the respondents filed an appeal under Section 173 of the said Act before the High Court of Himachal Pradesh at Shimla, which was registered as FAO No. 441 of 2003. Vide impugned judgment dated 27.03.2006, the High Court held that since the deceased not even being 18 years' old could not have been permitted to drive the scooter, the accident in question occurred due to contributory negligence both on the part of the scooterist and the bus driver in equal measure and, thus, reduced the amount of compensation from Rs.3,17,200/- to Rs.1,58,600/-. The appellants have come in appeal against this judgment dated 27.03.2006.

6. Learned counsel for the appellants submitted that the High Court, in the absence of any cogent material placed on record, erred in holding that the accident occurred due to the contributory negligence of the driver of the bus and the deceased scooterist.

7. On the other hand, learned senior counsel for the respondents vehemently contended that the High Court was justified in coming to the aforesaid conclusion of modifying the compensation so awarded as well as not taking cognizance of the testimony of PW-3 Lekh Ram.

8. We have gone through the material placed on record and heard learned counsel for the parties.

9. It is not in dispute that the deceased was the only son of his parents, i.e., the appellants herein. It is also not in dispute that when the collusion between the scooter and the bus took place on the fateful day at a place known as Nabahi, the deceased was driving scooter on his left side towards Sarkaghat from Mandi side. Admittedly, at the site where there was a curve, the bus driver did not blow the horn and the bus was being driven at a very high speed. All this is corroborated from the testimony of PW-3 Lekh Ram, who is stated to be an eye witness to the accident and not related to the deceased scooterist.

10.To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

11.In view of above, we allow the appeal. Accordingly, the impugned judgment of the High Court dated 27.03.2006 is set aside and the award of the Tribunal dated 01.07.20013 is upheld, with no orders as to costs.

.....C.J.I.

(P. Sathasivam) .....J.

(Ranjan Gogoi) .....J.

(N.V. Ramana) New Delhi;

March 10, 2014.

C.A.No.5764 of 2008