

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2501 OF 2020
(ARISING OUT OF SLP(C) No.19424/2018)

DHANI RAM & ANR.

APPELLANT(S)

VERSUS

AKRAM KHAN & ORS.

RESPONDENT(S)

O R D E R

1. Heard learned counsel for the parties.
2. Leave granted.
3. The appeal has been filed for setting aside the award passed by the Claims Tribunal which was affirmed by the High Court.
4. Facts in short are that an accident took place on 18.03.2011 in which one Banne Singh aged 26 years, who was a mining contractor having two trucks and a crane, died. He was riding on a motor cycle and was hit by one Tata vehicle bearing registration No. RJ14 G 6784, allegedly driven by Respondent No.2/Rajiv Nayak @ Raju in a rash and negligent manner. The deceased was coming from Bandhabaretha side a truck came from wrong lane hit the deceased, who was riding on his side. The deceased died on the spot. The respondent No.2/truck driver ran away from the spot. The truck was seized from spot and was inspected.
5. The FIR has been placed on record, indicating involvement of the vehicle. The mechanical inspection report of the truck is also

placed on record. The truck was mechanically inspected on 24.03.2011. The front bumper of the truck was corroded and broken on left side. The front bumper on the right side was found to be scratched and marks of blood were found on the tyres of front side of wheel.

6. It was claimed by the parents of the deceased that the deceased used to earn Rs.20,000/- per month by way of contractorship. Rs.1,38,73,000/- was claimed as compensation.

7. Respondent No.1/Akram Khan (owner of the truck) and Respondent No.2/driver of the truck, in their reply contested the claim. Factum of ownership was admitted by respondent No.1. The vehicle was insured with respondent No.3/United India Insurance Company Limited. Involvement of the vehicle in the accident was denied. Liability, if any, was that of the insurer as the vehicle was insured.

8. The Insurer/Respondent No.3, in its reply, denied the averments made in the claim petition and a stand was taken that the accident was not due to negligence of the driver but due to the fault of the deceased. It was further stated that the motor cycle of the deceased was also involved in the accident, therefore, its owner and insurance company were necessary party. It was contended that the truck driver was driving the vehicle against the terms and conditions of the policy and it was prayed that the claim petition be dismissed.

9. On behalf of the petitioners, two witnesses were examined,

namely, Prakash and Dhaniram and they have filed the document (Exhibit 1 to 39). In the defence driver/Rajiv Nayak @ Raju and owner/Akram Khan were examined as witnesses.

10. The Claim Tribunal dismissed the claim petition on the ground that the witnesses examined on behalf of the claimants were not the eye witnesses and no eye witness was examined on behalf of the claimants. The truck driver was not cross examined that his truck hit the deceased while the deceased was riding on the motor cycle and he drove the truck in a rash and negligent manner, which came from a wrong direction. As the Insurer did not produce any evidence and the documentary evidence adduced was not considered, the claim petition was dismissed by the Tribunal. The High Court without considering any evidence on record by a very short order affirmed the award passed by the Claims Tribunal.

11. We have heard learned counsel for parties, examined the record and the documents and the award passed by the Tribunal. A perusal of prompt FIR as well as the mechanical inspection report of vehicle makes it clear that the vehicle in question was involved in the accident. The inspection report is tell-telling that the front bumper was found to be broken on the left side and corner of the right side was scratched and the marks of blood on the front side tyres of the wheel were found. The involvement of the vehicle stands established as truck and motor cycle were seized from the spot itself. Thus, it is apparent that totally false defence had been taken by the owner as well as the driver as to non-involvement

of truck. The driver of the truck fled away from the spot of accident after leaving the truck. As there was no eye witness available on the place of accident, it was for the driver of the truck to explain the accident, who simply denied the factum of the accident itself. The conduct of truck driver shows he was negligent. The negligence of the deceased has not been established. The more responsibility is on the driver of the heavy vehicle and the method and manner in which the accident has taken place and as explained in the FIR and supported by mechanical inspection report of truck, it was for the driver of the truck to explain how accident took place and that the deceased was negligent. It is apparent that driver of truck drove the truck in a rash and negligent manner and it was on wrong side.

12. The driver of the truck was prosecuted in a criminal case also for committing the offence. We are of the considered opinion, in the facts and circumstances of the case, that the driver drove the truck in a rash and negligent manner and hit the deceased.

13. Coming to the quantum of compensation, the evidence discloses that deceased was a contractor and owned two trucks and a crane for the purpose of mining. The accident took place in the year 2011, the deceased was a young bachelor aged 26 years. It would be appropriate to assess income @ Rs.7,500/- per month. Considering the claimants are parents dependency is taken 50%, towards future prospects 40% has to be added, in the light of the decision of this Court in National Insurance Company Limited v. Pranay Sethi and

Others, reported in (2017) 16 SCC 680, considering the age of the deceased and that he was self-employed.

14. The compensation comes to Rs.10,71,000/- (Rs.3,750/- x 12 x 17). 40% future prospects comes to Rs.4,28,400/-. We award a further sum of Rs.50,000/- towards funeral expenses and for loss of estate a sum of Rs.15,000/- is granted. Thus, total compensation comes to (Rs.10,71,000 + 4,28,400/- + 50,000/- + 15,000/-) Rs.15,64,400/- (Rupees Fifteen Lacs Sixtyfour Thousand Four Hundred), which shall carry interest @ 7% per annum from the date of filing the claim petition till the realization. Let the above amount be deposited before the Claims Tribunal within three months from today. The liability of respondents is held to be joint and several.

15. The appeal is allowed to the aforesaid extent.

16. Pending application(s), if any, shall stand disposed of.

.....J.
[ARUN MISHRA]

.....J.
[S. ABDUL NAZEER]

.....J.
[INDIRA BANERJEE]

NEW DELHI;
JUNE 04, 2020.

ITEM NO.29

Virtual Court 2

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19424/2018

(Arising out of impugned final judgment and order dated 06-03-2018
in SBCMA No. 252/2015 passed by the High Court of Judicature for
Rajasthan at Jaipur)

DHANI RAM & ANR.

PETITIONER(S)

VERSUS

AKRAM KHAN & ORS.

RESPONDENT(S)

(IA No. 101977/2018 - EXEMPTION FROM FILING O.T.)

Date : 04-06-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Suhaas Ratna Joshi, AOR

For Respondent(s) Mr. Randhir Kumar Ojha, AOR
Mr. Purushottam Sharma, Adv.

Mr. Rohit Sinha, Adv.
Mr. T. Mahipal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)
A.R-CUM-P.S.

(JAGDISH CHANDER)
ASSISTANT REGISTRAR

(Signed order is placed on the file)