

S. B. CIVIL MSC. APPEAL NO. 3924/2008
(Hajari Lal Vs. Mahendra Singh and ors.)

Date of Judgment : 27-02-2009

HON'BLE MR. JUSTICE GUMAN SINGH

Mr. R. S. Sharma, for the appellants.
Mr. D. S. Jadon and Mr. Satyendra Sharma, for the respondents.

This appeal has been preferred on behalf of claimant-appellant Hajari Lal for enhancement of compensation awarded by the Learned Motor Accident Claims Tribunal, (Addl. District Judge), Khetri vide judgment dated 2.5.2008 whereby a sum of Rs. 2,18,000/- was assessed by way of compensation and out of which 50% was deducted on account of 50% contributory negligence on the part of injured.

2. Learned counsel for the appellant has challenged the finding of Learned Tribunal of issue no. 1 regarding the contributory negligence on the part of the appellant-injured regarding 50% negligence on the part of injured by the Tribunal. In this regard, it is submitted that as per testimony of eye witnesses AW-1 Hazari and AW-2 Shimbhu and AW-3 Gokul, accident took place on account of rash and negligent driving of offending

tractor but the injured who was pedestrian but he was found liable for 50% contributory negligence only because he was walking on the road. Thus it was argued that the finding of Learned Tribunal deserves to be set aside on the point of contributory negligence.

3. Per contra, Learned counsel for the respondents supported the judgment of the Tribunal and submitted that the Learned Tribunal has taken into consideration evidence adduced during inquiry and has awarded adequate compensation and calls for no interference.

4. After hearing the rival contentions, and going through the award as also record of the case, it is revealed that as per statement of eye witnesses, referred to above, there is evidence on record that it was offending tractor which dashed the injured while he was walking on road and injured was simply a pedestrian. It was the duty of the tractor driver to ensure that the vehicle does not dash anybody walking on the road. Therefore, finding on issue no. 1

given by the Learned Tribunal is unsatisfactory and hence same is set aside. Rest of the award on the point of compensation is upheld.

5. Accordingly, appeal of the injured-appellant is allowed and instead of half of the amount awarded, entire amount of award i.e. Rs. 2,18,000/- is awarded. Consequently, the Award passed by the Learned Tribunal is modified to the extent that the appellant shall also be paid a sum of Rs. 1,09,000/- by way of enhanced additional compensation from the date of appeal i.e. 8.7.08, with 6% interest to be paid within three months. Thereafter interest shall be paid @9% per annum. The rest of the terms of award shall remain unchanged. Record be sent forthwith.

(GUMAN SINGH), J.

Sandeep/-
item no. 65