



Dying declaration – Once a dying declaration is found to be reliable, it can form the basis of conviction

Description

JAGDISH PRASAD SINGH v. NEW INDIA ASSURANCE COMPANY LTD , (2024-1)213 PLR 192 (SC)

SUPREME COURT OF INDIA

Present : Justice Surya Kant & Justice K.V. Viswanathan.

JAGDISH PRASAD SINGH (Dead through Lrs.) & anr. – Appellants

Versus

NEW INDIA ASSURANCE COMPANY LTD. & ors. – Respondent(s)

Civil Appeal No.1572 of 2024 (Arising out of SLP(C)No.3888 of 2021)

Motor Vehicles Act, 1988 (59 of 1988) – Composite negligence – Head on collision – Composite negligence held on the part of both the drivers – Deceased passenger in bus – Only 50% of the determined amount was ordered to be paid on the ground that the driver/owner of the offending truck, involved in the collision with the bus, was not impleaded in the Claim Petition – High Court granted liberty to the appellants to file a separate claim for payment of the remaining amount from the offending truck – No reason for the High Court to compel them to initiate fresh recovery proceedings against the second offending vehicle – High Court ought to have ordered the disbursement of the entire compensation to the claimants, with due protection of the right of the insurance company to have recourse, as may be available in law, for the recovery of the part of its liability from the driver/owner of the offending truck – Pay and Recover.

Mr. Arun Aggarwal, AOR, Ms. Anshika Agarwal, Adv., Ms. Aditi Gupta, Adv., Ms. Dipti Jain, Adv., Mr. Shivam Saini, Adv., Mr. Praful Rawat, Adv. For Respondent(s): Mr. Rajesh Kumar Gupta, AOR, Ms. Jyoti Kaushik, Adv.

JUDGMENT

(02.02.2024) – Leave granted.

2. The appellants assail the order dated 28.01.2020, passed by the Gauhati High Court, whereby the motor accident claim, as determined by the Motor Accident Claims Tribunal, Dibrugarh (for short, ‘the Tribunal’), in MAC Case No.87 of 2010, has been broadly upheld. However, only 50% of the determined amount has been ordered to be paid to the appellants on the ground that the driver/owner of the offending truck, involved in a head on collision with the super bus, was not impleaded in the Claim Petition. Consequently, the High Court has granted liberty to the

appellants to file a separate claim for payment of the remaining amount from the offending truck.

3. The unfortunate accident took place on 13.06.2010. There was a head on collision in the night between a Super Bus and a Tata Truck. The deceased (son of the appellant), was also travelling in the bus and was amongst ten passengers who died on the spot. Thirty other passengers were injured and both the drivers of the vehicles also died. The appellants filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988, in which the Tribunal vide Award dated 03.06.2014, held them entitled to compensation amounting to Rs.30.70 lakhs along with simple interest at the rate of 6% p.a.

4. As noticed at the outset, the High Court has slightly reduced the compensation as assessed by the Tribunal. However, since the driver/owner/insurance company of the offending truck were not party respondents, the High Court has directed that a sum of Rs.13,87,000/- shall be paid to the appellants. For the balance amount, they shall be at liberty to recover by filing a fresh Claim Petition.

5. We have heard learned counsel for the parties and carefully perused the material placed on record.

6. In view of the fact that the appellants have been found entitled to a compensation of Rs.30,60,000/-, we see no reason for the High Court to compel them to initiate fresh recovery proceedings against the second offending vehicle.

7. It goes without saying that once there is a categorical finding of composite negligence on the part of both the drivers, which led to the horrifying accident, the High Court ought to have ordered the disbursement of the entire compensation to the appellants, with due protection of the right of the insurance company to have recourse, as may be available in law, for the recovery of the part of its liability from the driver/owner of the offending truck.

8. For the reasons aforesaid, we allow this appeal in part. As per the amount of compensation re-calculated by the High Court in para 11 of the impugned judgment, it is directed that let the balance amount of Rs.13,87,000/-, as awarded by the Tribunal, be deposited by the respondent-Insurance Company with the Tribunal within eight weeks.

9. The appellants will furnish the requisite identity proof etc., before the Tribunal. Upon doing so, the amount shall be proportionately disbursed among the appellants at the earliest.

10. The respondent – Insurance Company shall be at liberty to recover the above-stated amount, in accordance with law, from the driver/owner of the offending truck.

SS

—

Date

04/19/2024

Date Created

07/14/2022