

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 687 of 2017

Smt. Akeelan and others

.....Appellants.

Versus

Sri Nanhey Singh and others

.... Respondents

Present :

Mr. Pradeep Chamyal, Advocate, for the appellants.

Mr. Bharat Tiwari, Advocate, holding brief of Mr. Pulak Agarwal, Advocate, for the respondents.

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

The instant Appeal from Order has been preferred by the claimants as against the impugned award dated 27th October, 2017, by virtue of which, the learned Motor Accident Claims Tribunal has rejected the Motor Accident Claim Petition No. 138 of 2015, Akeelan and others Vs. Nanhey Singh and others.

2. It was contended in the Claim Petition, that on account of an accident which has chanced on 16th January, 2015, the husband of claimant No.1, late Sri Faryad Hussain, who was going on a cycle had met with an accident, with a truck container bearing Registration No. HR-38J-0027, which was being driven from Kichha to Sitarganj. According to the site plan, the victim, as well the vehicle, were being driven in the same direction, and at point (x) of the site plan, the accident has occurred.

3. The Claim Petition was preferred on the ground, that due to death of the breadwinner of the family, they were entitled to be awarded with the compensation of Rs.8,50,000/-, because at the time of death, the deceased was of 50 years of age, and he was physically fit, and used to work as a labourer and accordingly he used to earn about Rs.6,000/-p.m.

4. But the Claim Petition has been rejected on the ground of the statement recorded by PW2 Nadar Khan, who was said to be an eyewitness of the accident, and coupled with the fact, that there was a misinterpretation given in the statement of Nanhey Singh, the owner of the vehicle with regard to the aspect pertaining to as to whether on the date of the accident, the driver who working on his behalf was having a valid driving licence or not.

5. In accordance with the statement of the alleged eyewitness PW2, Nadar Khan, upon considering the statement, the Claim Tribunal has come to the conclusion, that Nadar Khan has not been able to prove, that he was an eyewitness to the accident. Apart from that, if the written objection of the driver is taken into consideration, which was an aspect considered while deciding issue No.2, pertaining to the consideration of the evidence of driving licence, i.e. exhibit paper No.30 Ga, it was stated by the owner of the vehicle, that on the date of the accident, he was not very sure as to whether the driver employed by him, was having a valid driving licence or not, because it was contended by him in the statement, that at the time when he was deployed as a

driver by him, he was shown to be having a valid driving licence.

6. It is exclusively based upon the statement of the eyewitness, that the learned Tribunal has rejected the claim petition.

7. But, if the statement of Aafaq is taken into consideration, as it is on record of the LCR, the manner in which the statement has been recorded by Aafaq, it seems, that he too cannot be said to be an eyewitness of the accident because in his cross examination, he has submitted that the cycle, and the tanker had met with head on collision, which according to the site plan, it could not be said to have been possible, coupled with the fact, that Aafaq cannot be said to have seen the accident because in accordance with the cross examination because he has made a statement, that on the place of the accident which has been marked as figure (x) in the site plan, after the occurrence of the accident, the same was surrounded by number of other people, as such, he cannot be said to be an eyewitness to the accident.

8. Since, there has been mis interpretation given to the statement of PW2, Nadar Khan, about the establishment of the accident, which has said to have occurred resulting into the death of Faryad Hussain, and particularly also the statement of the owner of the vehicle, which was recorded before the learned Tribunal, it creates a doubt as to whether at all the Tribunal has rightly appreciated the statement of PW2 Nadar Khan, and the other documentary evidence and

the written statement filed by the owner of the vehicle, as paper No. 28 Kha, and as such, it could be inferred that the judgment which has been rendered by the Tribunal on 27th October, 2017, is based upon the misreading of the evidence on record.

9. Thus, as a result thereto, the impugned judgment dated 27th October, 2017, is hereby quashed. The matter is remitted back to the learned Tribunal to reconsider the Claim Petition and decide the same afresh in accordance with law.

10. Since the matter being an old case pertaining to an accident which has chanced in 2015, and the family has suffered a loss because of the sad demise of the breadwinner of the family, it is hoped and trusted that the Tribunal after remand of the matter would decide the same within a period of six months from the date of production of the certified copy of this judgement.

(Sharad Kumar Sharma, J.)

11.12.2023

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