

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 263 of 1997

Appellant :- Sher Bahadur Singh

Respondent :- Bhagwan Dass And Another

Counsel for Appellant :- S.D.N.Singh,Dr. D.K. Tiwari,Pawnesh Tiwari

Counsel for Respondent :- Brij Raj Singh,Anita Srivastava,Hari Mohan Srivastava,Neeraj Srivastava,Yogendra Kumar Srivastava

Hon'ble Saral Srivastava,J.

1. Heard Sri Shatrughan Yadav, Advocate, bearing Advocate Roll No.A/S 06444/2022, holding brief of Dr. D.K. Tiwari, learned counsel for the appellant and learned counsel for the claimants/respondents.

2. The present appeal has been preferred by the appellant against the judgement and award dated 25.02.1997 passed by the Motor Accident Claims Tribunal/2nd Additional District Judge, Mainpuri in M.A.C.P. 201 of 1994.

3. Challenging the award, learned counsel for the appellant has contended that no accident had taken place by the offending jeep No.MP7H-1017(hereinafter referred to as the 'offending vehicle'), therefore, the Tribunal has erred in law in awarding Rs.50,000/- as compensation to the claimants/respondents for the death of a minor child, namely, Ajju aged about 9 years.

4. Be that as it may, the Tribunal after considering the testimony of PW1, PW2 & PW3 recorded a finding that the deceased Ajju died in the accident with the offending vehicle. Though the owner of the offending vehicle i.e. appellant has also produced himself and one Prakash Chandra as witnesses to prove that no accident had

taken place by the offending vehicle, but the Tribunal considered the testimony of DW4-Rakesh Kumar who deposed that the deceased had died in an accident by the vehicle tempo tracks.

5. The Tribunal after appreciating the entire evidence on record found the testimony of PW1, PW2 & PW3 more credible, and accordingly, held that the accident had taken place by the offending vehicle, and awarded Rs.50,000/- in lump-sum as compensation to the claimants/respondents. The finding of the Tribunal on the issue of occurrence of accident is based upon proper appreciation of evidence on record. This Court also finds that the award of Rs.50,000/- by the Tribunal is just and proper.

6. It is also urged by the learned counsel for the appellant that the interest @ 12% per annum on the awarded amount is excessive, though, the learned counsel for the claimants/respondents contends that 12% interest has rightly been awarded by the Tribunal.

7. Considering the fact that the accident had taken place in the year 1994, it appears that the interest of 12% on the awarded amount is excessive, and therefore, award of 12% interest is reduced to 9%. Accordingly, 9% interest shall be computed on the awarded amount from the date of institution of claim petition till its payment.

8. For the reasons given above, the appeal is partly **allowed** and the award is modified to the extent indicated above.

Order Date :- 16.10.2023

NS