

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 104 of 1999

Appellant :- Chandra Shekhar Pandey

Respondent :- Lallu And Others

Counsel for Appellant :- S.C.

Pandey,H.B.Singh,H.N.Shukla,Hanuman

Kinkar,R.R.Shukla,Sharad Chandra Singh,Shashi Kumar Dwivedi

Counsel for Respondent :- S.C. Srivastava,Govind Saran,Govind Sharma,Lal Ji Sinha,Praveen Kumar Srivastava

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant challenging the award dated 03.12.1998 passed by Motor Accident Claims Tribunal/1st Additional District Judge, Varanasi in M.A.C.P. No.179/1992.
3. Challenging the award, learned counsel for the appellant has contended that the Tribunal has erred in law in rejecting the claim petition on the ground that the tractor trolley was being used for a purpose not connected with agriculture. It is submitted that the accident had taken place due to negligence of driver of tractor, and thus, the compensation ought to have been awarded by the Tribunal for the damages to the tractor.
4. Per contra, learned counsel for the respondents would contend that the case of the claimant is that the accident was the result of negligence of the Railways. It is submitted that PW-3 in his testimony has categorically stated that the driver of the tractor took all precautions while crossing the Railway track but it was

unmanned Railway crossing and there was no board of caution that has resulted in accident. Thus, the finding of the Tribunal that the accident was the result of sole negligence of Railways is correct and based upon proper appreciation of facts and evidence on record.

5. Learned counsel for the insurance company would contend that categorical finding has been recorded by the Tribunal that the tractor was insured for agriculture purpose whereas at the time of accident, it was being used to carry a Baraat which is not an agriculture purpose, thus, the owner committed breach of insurance policy, and therefore, insurance company is not liable to compensate the owner for the damages suffered by him in the accident.

6. Be that as it may, this Court has perused the original record and finds that Tribunal in concluding that the accident was the result of negligence of Railways considered the testimony of PW-3 who was the eyewitness of the accident and stated that the driver of the tractor took all precautions and care while crossing the Railway track and it was only because of the fact that it was unmanned Railway crossing and there was no caution board, the accident had taken place and accordingly the Tribunal concluded that the accident was the result of negligence of the Railways. The Tribunal further relied upon the judgment of the Apex Court and held that since there was negligence of the Railways in the accident, the petition under Motor Vehicles Act is not maintainable. The appellant has to institute a suit for recovery of damages. Consequently, the Tribunal refused to award the compensation against the Railways.

7. So far as the liability of the insurance company is concerned, a

categorical finding has been recorded by the Tribunal that Baraat had been carried on trolley attached with the tractor. It has also been held by the Tribunal that tractor was insured for agriculture purpose whereas at the time of accident, it was not being used for agriculture purpose, thus, insurance company cannot be fastened liability to compensate the damages.

8. The learned counsel for the appellant could demonstrate that the aforesaid finding of the Tribunal is perverse and against the record. In such view of the fact, this Court does not find any merit in the appeal.

9. For the reasons given above, the appeal lacks merit and is accordingly **dismissed** without any order as to costs.

Order Date :- 6.11.2023

R.S. Tiwari