

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 615 of 1999

Appellant :- U.P. State Road Transport Corporation Gorakhpur

Respondent :- Smt. Saraswaidevi And Others

Counsel for Appellant :- Vivek Saran, Dinkar Mani

Tripathi, Dinkar Mani Tripathi

Counsel for Respondent :- Piyush Mishra

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant against the judgement and award dated 08.03.1999 passed by the Motor Accident Claims Tribunal/IVth Additional District Judge Court No.5, Kanpur Dehat in MACP No.27 of 2005, whereby, Tribunal has awarded compensation of Rs.8,90,168/- to the claimants.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was riding the motorcycle, which met with the accident with Bus No.U.P.053D-6374 (hereinafter referred to as the 'offending bus'). It is submitted that both the vehicles involved in the accident were coming from opposite directions and it was a case of head on collision between the two vehicles. Accordingly, it is submitted that the deceased was also negligent in the accident and the Tribunal should have reduced the compensation to the extent of negligence of the deceased in the accident. It is further submitted that the award of 12% interest is excessive which needs reduction.
4. Be that as it may, the Tribunal in holding that the accident had taken place due to rash and negligent driving of the driver of the offending bus, considered the testimony of PW2 and PW3 who were eye witnesses of the accident. PW2 and PW3 in their

testimony stated that the accident had taken place due to rash and negligent driving of the driver of the offending bus.

5. The appellant produced the driver of the bus to rebut the testimony of PW2 and PW3 in respect of negligence of the driver of the bus and to prove that the deceased was also negligent in the accident, but in the opinion of the Court, the testimony of driver of the offending bus cannot be given precedence over the testimony of PW2 and PW3 who are independent witnesses for the reason that the driver of the bus being an employee of the appellant cannot give any testimony against the interest of his employer. In such view of the fact, the finding of the Tribunal on the issue of negligence is a finding of fact, based upon proper appreciation of evidence on record, does not warrant any interference by this Court.

6. So far as the award in respect to interest of 12% is concerned, this Court is of the view that at the relevant time 12% interest was prevalent, and therefore, the submission of learned counsel for the appellant in respect to interest is also not sustainable.

7. Thus, for the reasons given above, the appeal lacks merit and is accordingly **dismissed** with no order as to costs.

Order Date :- 31.10.2023

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