

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 255 of 2004

Appellant :- U.P. State Road Transport Corporation

Respondent :- Smt. Rekha And Others

Counsel for Appellant :- Samir Sharma(Senior Adv.),Girish Chandra Yadav

Counsel for Respondent :- Anshul Kumar Singhal,Anil Kumar Srivastava (Senior Adv.)

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants and learned counsel for the respondent.
2. The present appeal has been filed by the appellants challenging the award dated 22.10.2003 passed by Motor Accident Claims Tribunal, Gautam Budh Nagar in M.A.C. No.5/1999.
3. Challenging the award, learned counsel for the appellants has contended that the tribunal has erred in law in holding the sole negligence of driver of bus of appellant in the accident. It is submitted that the manner in which the accident had taken place demonstrates that the driver of maruti car was also negligent and thus, the tribunal should have reduced the compensation to the extent of negligence of driver of maruti car. Accordingly, it is submitted that the award passed by the tribunal is not sustainable in law.
4. Per contra, learned counsel for the respondents has contended that UPSRTC has withdrawn the F.A.F.O. No.256 of 2004 which also arose out of same accident and therefore,

the plea of contributory negligence is not open to the UPSRTC to challenge the award.

5. Be that as it may, since the UPSRTC has withdrawn the F.A.F.O. No.256 of 2004 which arose out of same accident, therefore, it is not open to the appellants to raise the contention of contributory negligence in the accident.

6. Consequently, the appeal lacks merit and is **dismissed**.

Order Date :- 2.11.2023

SS