

Court No. - 2

1. **Case :-** FIRST APPEAL FROM ORDER No. - 1092 of 2005

Appellant :- United India Insurance Co Ltd

Respondent :- Smt. Sonkali And Another

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Sunil Kumar,Pankaj Kumar

2. **Case :-** FIRST APPEAL FROM ORDER No. - 1653 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Panna Lal And Others

Counsel for Appellant :- Saurabh Srivastava

3. **Case :-** FIRST APPEAL FROM ORDER No. - 1647 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Rakesh Kumar And Another

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Sanjay Kumar Srivastava

4. **Case :-** FIRST APPEAL FROM ORDER No. - 1648 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Ganesh Kumar And Another

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Sanjay Kumar Srivastava

5. **Case :-** FIRST APPEAL FROM ORDER No. - 1650 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Ram Swaroop And Others

Counsel for Appellant :- Saurabh Srivastava

6. **Case :-** FIRST APPEAL FROM ORDER No. - 1652 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Munna Lal And Others

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Rakesh Kumar Rathore

7. Case :- FIRST APPEAL FROM ORDER No. - 1654 of 2004

Appellant :- United India Insurance Co Ltd

Respondent :- Vidhya Ram And Others

Counsel for Appellant :- Saurabh Srivastava

Counsel for Respondent :- Rakesh Kumar Rathore

8. Case :- FIRST APPEAL FROM ORDER No. - 2040 of 2008

Appellant :- United India Insurance Co. Ltd.

Respondent :- Sri Ram Das And Another

Counsel for Appellant :- Saurabh Srivastava

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for appellants and learned counsel for respondents.
2. Since, these eight appeals arise out of same accident and involve common issues, therefore, these appeals are being decided with a common judgement.
3. For convenience, the facts are being delineated from F.A.F.O. No.1092 of 2005.
4. The appellant-insurance company has preferred the appeal challenging the award dated 17.02.2005 passed by the Motor Accident Claims Tribunal/Special Judge (E.C. Act), Mainpuri (hereinafter referred to as 'Tribunal') whereby Tribunal has awarded Rs.3,91,000/- alongwith 6% interest as compensation for the death of one Ravindra Singh Yadav in an accident on 28.08.1997 with tanker No.NLA/8081.
5. Challenging the award, learned counsel for the appellant

has contended that the front tyre of the tanker burst due to which the tanker turned turtle. It is submitted that the tanker was carrying solvent 90 which was an inflammable product. It is submitted that the villagers living in the vicinity in place of accident, started looting the product loaded in the tanker. It is submitted that the driver of the tanker cautioned the villagers not to touch the product as the same was highly inflammable but the villagers did not listen to the warnings of the driver of tanker and some villager ignited match box which caused fire due to which several persons suffered injuries. It is submitted that there was no negligence of the driver of tanker in the accident and the claimants are themselves responsible for the occurrence of the alleged accident as someone in the around ignited match box due to which solvent 90 caught fire resulting in causing injury to several persons. Thus, it is contended that it was not a case of motor accident and there was no negligence of the driver of tanker in such mishappening, therefore, the tribunal has erred in law in fixing the liability upon the appellant to pay the compensation.

6. Per contra, learned counsel for the respondents has contended that the tribunal has recorded a categorical finding that the driver was driving the vehicle rashly and negligently. It is submitted that it is not a case where the tanker was hit by some other vehicles rather it was a case where the tyre of the tanker got burst due to which the driver of tanker lost control over it resulting in overturning the tanker. It is submitted that had the driver of tanker been cautious and driving it at a

moderate speed, even if the tyre got burst, the driver could not have lost the control over the vehicle and thus, the accident could have been avoided. It is submitted that there was no evidence on record which established that the claimants suffered injuries as they were looting the product loaded in the tanker. It is submitted that the finding of the tribunal in respect to the negligence of driver of tanker in the accident is a finding of fact based upon proper appreciation of facts and evidence on record and is not liable to be interfered with by this Court in its appellate jurisdiction.

7. I have heard learned counsel for the parties and perused the record.

8. The facts emerge from the record are that the tanker was carrying inflammable product namely solvent 90. The front tyre of the tanker got burst at about 4:30 a.m. due to which the driver of tanker lost control and the tanker got turned turtle and the product loaded in the tanker started pouring out. Though, it is a case of the insurance company that the villagers living in vicinity at place of accident started looting the product namely solvent 90 loaded in the tanker but there was no evidence on record led by the insurance company except the report of the investigator which stated that the claimants suffered injuries while they were looting the product loaded in the tanker.

9. In one of the claim petitions i.e. MACP No.128/1998, the investigator appeared before the tribunal and proved the report. However, this Court may note that the investigator

was not present on the spot at the time of occurrence of the unfortunate incident and the report has been submitted on the basis of information gathered by the investigator. The insurance company did not produce any of the persons who informed the investigator that the alleged accident had taken place on account of fault of the claimants as they were looting the product. In such view of the fact, the tribunal has rightly disbelieved the report of the investigator.

10. The tribunal also recorded a finding that the testimony of driver of tanker is not worthy reliance inasmuch as he was an interested witness. It is pertinent to note that the case of the claimants in the claim petition was that the fire broke out in the tanker causing injury to the persons in nearby. The claimants proved their case by leading cogent evidence on record, and the documentary evidence also corroborates the testimony of witness of claimants who were eye witness of the accident.

11. The tribunal after appreciating the evidence on record recorded a categorical finding that if the driver of tanker had been cautious and careful in driving the tanker and was driving it at a moderate speed, even if the tyre of the tanker burst, the driver of tanker could have stopped the tanker and the tanker could not have turned turtle causing pouring of the product loaded in the tanker. Accordingly, the tribunal held that the accident was result of sole negligence of driver of the tanker. This Court is of the view that the finding of the tribunal on the aforesaid point is a finding of fact based upon

proper appreciation of facts and evidence on record. Though, the learned counsel for the appellant made best endeavour to contend that the finding on issue of negligence is illegal and not sustainable but could not show that the such finding is perverse. In such view of the fact, this Court does not find any good ground to interfere with the finding of the tribunal on issue No.1.

12. For the reasons given above, all the appeals lack merit and are **dismissed** without any order as to cost.

Order Date :- 16.10.2023

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