

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 115 of 2005

Appellant :- United India Insurance Co Ltd

Respondent :- Smt Shashi Devi And Others

Counsel for Appellant :- Suarabh Srivastava

Counsel for Respondent :- Vashishtha Tewari, Madhava Nand Shukla

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 06.10.2004 passed by the Motor Accident Claims Tribunal/A.D.J. Room No. 4, Deoria, in M.A.C. No.244 of 2003 whereby the Tribunal has awarded Rs.4,41,000/- along with 9% interest as compensation to the claimants/respondents.
3. Challenging the aforesaid award, learned counsel for the appellant has contended that offending vehicle Jeep No. UP-27C-5460 has been falsely implicated in the accident. It has further submitted that no F.I.R. had been lodged in the alleged incident and thus, the Tribunal has erred in law in holding the accident had taken place by the vehicle Jeep No. UP-27C-5460. It is further contended that accident had taken place in the year 2003, therefore, Tribunal has erred in taking the income of the deceased Rs. 3,000/- per month without there being any evidence on record in respect to the income of the deceased.
4. Per contra learned counsel for the claimants-respondents submitted that the accident was proved by the eye witness PW-2 who deposed before the Tribunal that the accident has taken by vehicle Jeep No. UP-27C-5460, the insurance company did not lead any evidence to rebut the testimony of P.W.2. The postmortem of the deceased also suggested that the deceased died because of injuries sustained by him in the accident. Accordingly, it is submitted that the finding of the Tribunal holding that accident had taken place by vehicle Jeep No. UP-27C-5460 is based upon proper appreciation of fact and evidence on record and does not warrant any interference by this Court in its appellate jurisdiction. It is further submitted that compensation awarded just and proper

and is not liable to be interfered with by this Court in appeal.

5. Be that as it may, the law is settled that the claimant has to prove the occurrence of accident on the principle of preponderance of probability. In the instant case, PW-2 who was the eye witness of the accident appeared before the Tribunal and deposed that the accident had taken place by the vehicle Jeep No. UP-27C-5460 and the postmortem of the deceased also suggested that it was an accidental death. The insurance company did not led any evidence in rebuttal to the testimony of claimants.

6. Learned counsel for the appellant despite his best endeavour could not demonstrate from the record that the finding of the Tribunal on issue of involvement of offending vehicle is perverse and erroneous.

7. In such view of the fact, this Court is of the opinion that the finding of the Tribunal on the issue of involvement of vehicle Jeep No. UP-27C-5460 is based upon proper appreciation of evidence on record and thus, being a finding of fact, does not warrant any interference by this Court in appeal.

8. So far as, the issue of quantification of compensation is concerned, the court is duty bound to award just and fair compensation. In the instant case, the Tribunal has not awarded any amount towards future prospect. In such view of fact this Court is not inclined to interfere with the compensation,

9. For the reasons given above, the appeal lacks merit and is accordingly, ***dismissed*** with no order as to cost.

Order Date :- 12.10.2023

Vikram