

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1556 of 2005

Appellant :- United India Insurance Company Ltd

Respondent :- Kamal Kumar Sahagal And Others

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- Amit Kumar Sinha, Deepali Srivastava Sinha, Diwakar Prasad Shukla, S.P. Pandey

with

Case :- FIRST APPEAL FROM ORDER No. - 1557 of 2005

Appellant :- United India Insurance Company Ltd

Respondent :- Gagan Sahagal And Others

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- Deepali Srivastava Sinha, Amit Kumar Sinha, D.P. Shukla, S.P. Pandey

Hon'ble Saral Srivastava, J.

1. Learned counsel for the appellant is directed to comply with the order of this Court dated 13.10.2023 during the course of day.
2. Heard learned counsel for the appellant.
3. Since, these two appeals are arising out of same accident and involves common issues, therefore, both the appeals are decided together with this common judgement.
4. For convenience, the facts are being delineated from F.A.F.O. No.1556 of 2005.
5. Both the appeals i.e. F.A.F.O. No.1556 of 2005 and F.A.F.O. No.1557 of 2005 have been filed by the appellant-insurance company challenging the award dated 25.01.2005 passed by Motor

Accident Claims Tribunal/A.D.J., Maharajganj in M.A.C.P. No.11/1999 and M.A.C. No.79/1999 respectively.

6. Challenging the award, learned counsel for the appellant has contended that the appellant is the insurer of jeep No. UP-52/B-7691. It is submitted that the claimant was riding on the motorcycle who met with accident with jeep. It is submitted that since it was a case of accident of two vehicles coming from opposite direction, therefore, it is evident that there was negligence of the claimant/respondent also in the accident and the Tribunal should have apportioned the negligence of driver of motorcycle equally. Accordingly, it is submitted that the finding of the Tribunal on the issue of negligence is not sustainable in law. It is further submitted that in both the appeals, the Tribunal has not assessed the loss earning capacity, and therefore, the compensation awarded by the Tribunal is excessive and not sustainable in law.

7. Be that as it may, the Tribunal on the basis of evidence of eyewitness PW-1- Kamal Sehgal & PW-2- Gagan Sehgal held the negligence of the driver of jeep in the accident. The insurance company did not lead any evidence in rebuttal to the testimony of PW-1 & PW-2. The testimony of PW-1 & PW-2 is also corroborated by other documentary evidence on record. The Tribunal after appreciating and considering in detail the testimony of PW-1 & PW-2 concluded that the accident was the result of sole negligence of driver of jeep. The finding of the Tribunal is based upon proper appreciation of evidence on record and being a finding of fact does not call for any interference by this Court in its appellate jurisdiction. In such view of the fact, the contention of learned counsel for the appellant in respect to the issue of negligence is devoid of merit and is rejected.

8. So far as the issue of quantification of compensation is concerned, there is substance in the submission of learned counsel for the appellant that the Tribunal should have assessed the loss earning capacity, and thereafter, should have calculated the compensation but in the instant case, the Tribunal has not awarded any amount towards future prospect whereas in view of the judgment of the Apex Court Pappu Deo Yadav Vs. Naresh Kumar & Others AIR 2020 SC 4424 the claimant is entitled to future prospect. In such view of the fact, this Court is not inclined to interfere with the quantification of compensation.

9. For the reasons given above, both the appeals lack merit and are accordingly **dismissed** without any order as to costs.

Order Date :- 1.11.2023

R.S. Tiwari