

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1992 of 2006

Appellant :- Shakuntala Devi And Others

Respondent :- Prafull Chandra And Another

Counsel for Appellant :- R.K. Shahi, S.A. Ansari, Suhel Ahmad Azmi, V.N. Pandey

Counsel for Respondent :- S.A. Azmi

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the claimants/appellants and learned counsel for the respondents.

2. The present appeal has been preferred by the claimants/appellants against the order dated 31.05.2006 passed by the Motor Accident Claims Tribunal/District Judge, Kushinagar at Padrauna (hereinafter referred to as 'Tribunal') whereby Tribunal has rejected the claim petition of the claimants/appellants.

3. Challenging the aforesaid order, learned counsel for the claimants/appellants has contended that Tribunal has erred in law in rejecting the claim petition on the ground that it is not maintainable. It is submitted that claimants/appellants produced P.W.-4 Om Prakash, eye witness of the accident, who proved the accident, and in the absence of any rebuttal to the testimony of P.W.4, the Tribunal has erred in law in holding that the claimants/appellants have failed to prove the accident. It is further submitted that the statement of P.W.4 was corroborated by other documentary evidences on record, and in the absence of any evidence on record in rebuttal to the testimony of P.W.4, the Tribunal has erred in law in holding that the claimants/appellants failed to prove the accident. Thus, it is submitted that order impugned rejecting the claim petition is not sustainable in law and is liable to be set aside.

4. Per contra, learned counsel for the respondents would contend that respondents gave ample evidence on record which proved that deceased had not died in the accident. It is submitted that Tribunal in disbelieving the testimony of P.W.4 gave elaborate reasons in concluding that testimony of P.W.4 was not worthy reliance. Accordingly, it is submitted that Tribunal has rightly held that claimants/appellants failed to prove that the deceased-Munna

Dhobi had died in the accident with Ambassador Car No.C.P.R-6887 and consequently, it rightly rejected the claim petition.

5. Be that as it may, the claimants/appellants instituted the claim petition for the death of one Munna Dhobi, who met with an accident with Ambassador Car No.C.P.R-6887. The case of the claimants/appellants was that Ambassador Car was being driven by its driver rashly and negligently and hit the Munna Dhobi, who suffered injuries and died. The F.I.R. in respect to the alleged accident was lodged and postmortem was also conducted and charge sheet was filed against the driver of the Ambassador Car.

6. The claimants/appellants also produced P.W.4-Om Prakash as eye witness of the accident who deposed that deceased was hit by Ambassador Car No.C.P.R-6887, and the accident was the result of rash and negligent driving of driver of Ambassador Car. He further stated that he accompanied the deceased to the hospital.

7. The Tribunal on presumption concluded that the accident had taken place on a national highway, and in case of accident on a national highway, usually number of people thronged around the place of accident, and it is not believable that if P.W.4 was on the place of accident, he did not tell the number of the vehicle to anybody. Accordingly, the Tribunal found that the testimony of P.W.4 was not credible and it disbelieved the same.

8. The Court finds that the aforesaid finding of the Tribunal is based on no evidence on record and same cannot be sustained in law. This Court may also record that claimants/appellants in order to prove the accident produced P.W.4 as eye witness of the accident, and testimony of P.W.4 is corroborated by other documentary evidence on record namely, F.I.R., charge sheet, post-mortem report of the deceased etc. The insurance company did not lead any evidence on record in rebuttal to the testimony of P.W.4.

9. In such view of the fact, this Court is of the view that finding of the Tribunal that claimants/appellants failed to prove the occurrence of accident by Ambassador Car No.C.P.R-6887 is perverse and not sustainable in law. Consequently, the finding of the Tribunal on the issue no.1 against the claimants/appellants is set aside and it is held that the Munna Dhobi had died in the accident with Ambassador Car No.C.P.R-6887 and accident was the result of rash and negligent driving of driver of Ambassador Car.

10. So far as the finding of the Tribunal on issue nos.2 & 3 are concerned, the Tribunal has not given any reason for deciding the

issue nos.2 & 3 against the claimants/appellants and in such view of the fact, the finding of the Tribunal on the issue nos.2 & 3 are set aside.

11. Accordingly, the appeal is partly ***allowed*** and matter is remanded back to the Tribunal to decide issue nos.2, 3 & 4 afresh in accordance with law expeditiously, preferably within a period of five months from the date of production of certified copy of this order.

Order Date :- 13.10.2023

Sattiyarth