

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 948 of 1997

Appellant :- Smt. Sahidun And Another

Respondent :- Shiva Pujan Singh And Another

Counsel for Appellant :- Ramesh Kumar Tripathi, Alok Singh, Phool Chandra Singh, Sumitra Singh

Counsel for Respondent :- Kuldeep Shanker Amist

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present appeal has been filed by the claimants/appellants against the judgement and award dated 25.07.1997 passed by Motor Accident Claims Tribunal/District Judge, Basti in M.A.C.P. No.12 of 1995.

3. Challenging the said award, learned counsel for the appellants has contended that the Tribunal has erred in law in disbelieving the testimony of PW2 on a flimsy ground. It is submitted that PW2 in his testimony has categorically stated that the Truck No. U.M.O.-9242 (hereinafter referred to as the 'offending vehicle') was caught at some distance from the place of accident and the F.I.R. was also lodged against the offending vehicle. It is further submitted that the fact that the offending vehicle was caught at some distance immediately after the accident and F.I.R. was also lodged against the offending vehicle reflects that the Tribunal has erred in disbelieving the testimony of PW2 on the issue of involvement of the offending vehicle in the accident. It is contended that the testimony of owner of the offending vehicle was not worth reliance, inasmuch as the owner of the offending vehicle was an

interested witness, and in such view of the fact, the finding of the Tribunal that the accident had not taken place by the offending vehicle is not sustainable in law.

4. Per contra, learned counsel for the respondents would contend that the Tribunal in disbelieving the testimony of PW2 gave cogent reason that PW2 was the real brother of the deceased and was an interested witness. It is submitted that the Tribunal further held that the claimants/appellants did not produce any independent witness to prove the accident. Accordingly, it is submitted that the Tribunal has rightly held that the claimants/appellants had failed to prove the accident, and in such view of the fact, the Tribunal has rightly dismissed the claim petition.

5. Be that as it may, PW2 in his deposition has categorically stated that the accident had taken place by the offending vehicle. He also stated that the offending vehicle was caught at some distance from the place of accident, F.I.R. was also lodged against the said vehicle and charge sheet was filed by the police against the driver of the offending vehicle. The testimony of PW2 is corroborated by the documentary evidence on record, and the Tribunal in disbelieving the testimony of PW2 ignored this relevant aspect of the matter. It is pertinent to note that the testimony of the owner of the offending vehicle is contrary to the documentary evidence on record and the owner being an interested witness being the owner of the offending vehicle is not expected to give any testimony against him, and in such view of the fact, the testimony of the owner of the offending vehicle is not credible. Accordingly, this Court is of the view that the Tribunal has erred in law in holding that the claimants/appellants have failed to prove that the accident had taken place by the offending vehicle. Thus, the finding of the

Tribunal on the issue No.1 is not sustainable in law, and is accordingly, set aside.

6. Considering the fact that the deceased was riding a bicycle and was hit by the offending vehicle, therefore, in such view of the fact, the negligence in the accident was of the driver of the offending vehicle. Thus, it is held that the accident was the result of rash and negligent driving of the driver of the offending vehicle.

7. For the reasons given above, the appeal is **allowed**. The matter is remanded to the Tribunal to decide the other issues involved in the claim petition afresh after following the due procedure of law, preferably within a period of four months from the date of production of a certified copy of this order without granting any unnecessary adjournments to either of the parties.

Order Date :- 17.10.2023

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