

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3856 of 2008

Appellant :- Oriental Insurance Co Ltd

Respondent :- Savitri Devi And Others

Counsel for Appellant :- Amaresh Sinha

Counsel for Respondent :- Abhishek Kumar Jaiswal, Arvind Singh, B.K. Singh Raghuvanshi, Umesh Chandra Shukla

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 appellant-insurance company challenging the award dated 01.10.2008 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.14, Allahabad in M.A.C.P. No.347/2004.

3. Challenging the award, learned counsel for the appellant has contended that the claimants/respondents failed to prove that the deceased died due to injuries suffered by him in the accident. It is submitted that the death certificate was issued by Parvati Hospital which disclosed that the cause of death was heart attack, therefore, claim petition was not maintainable as it was not a case which arose out of use of Motor Vehicle. It is further contended that it was a head on collision between tempo and truck insured by national insurance company and manner in which the accident had taken place demonstrates that the accident was the result of negligence of driver of both drivers. Accordingly, the Tribunal should have reduced the compensation to the extent of negligence of driver of the tempo in the accident.

4. Per contra, learned counsel for the respondents would contend

that the FIR was lodged in respect of alleged accident and police also filed charge sheet against the driver of truck. It is further contended that the accident was proved by PW-2 Jagatdhari who was eye-witness of the accident and proved that the deceased had died because of injuries suffered in the accident. Accordingly, it is submitted that the Tribunal has correctly recorded a finding that the deceased had died due to injury suffered by him in the accident. It is further contended that it was a case of composite negligence as the deceased was traveling in the tempo and if the insurance company is of the view that there was negligence of the driver of the tempo in the accident, the insurance company may make claim against the owner of the tempo and recover the amount from the owner of the tempo for the negligence of driver of the tempo.

5. Be that as it may, it is not disputed that the FIR in respect to the said accident was lodged and police filed charge-sheet against the driver of tempo. PW-2 who was the eye-witness of the accident appeared before the Tribunal and deposed that the deceased had died due to injuries suffered by him in the accident. The insurance company did not lead any evidence in rebuttal to the testimony of PW-2. Since the finding of the Tribunal is based upon testimony of PW-2 who was eye-witness of the accident, therefore, this Court does not find any illegality committed by the Tribunal in holding that the deceased had died due to injuries suffered by him in the accident. Therefore, first contention of learned counsel for the appellant being misconceived and is rejected.

6. So far the issue with regard to contributory negligence is concerned, the Apex Court in the case of **Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273** has

held that in case of composite negligence, it is choice of claimant to claim compensation from either of the tortfeasor. As it was a case of composite negligence since deceased was travelling in the tempo therefore the controversy is covered by the judgment of the Apex Court in the case of **Khenyei (supra)**. Therefore, contention of learned counsel for the appellant with respect to negligence is misconceived and is not sustainable in law and is accordingly rejected.

7. For the reasons given above, the appeal lacks merit and is accordingly ***dismissed*** without any order as to costs.

Order Date :- 13.10.2023

R.S. Tiwari