

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1176 of 1998

Appellant :- Gajadhar Singh And Another

Respondent :- Saghir Hasan And Another

Counsel for Appellant :- Anil Kumar Sharma

Counsel for Respondent :- Pradeep Kumar Sinha

Hon'ble Saral Srivastava,J.

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

2. The present appeal has been preferred by the claimants/appellants against the judgement and award dated 03.09.1998 passed by the Motor Accident Claims Tribunal, Etawah/Special Judge, E.C. Act, Etawah in M.A.C.P. No.487 of 1995, by which the claim petition preferred by the claimants/appellant has been rejected.

3. Challenging the award, learned counsel for the appellants has contended that the Tribunal has erred in law in holding that no accident had taken place by the Truck No.U.P.78B-2465 (hereinafter referred to as the 'offending vehicle'). It is contended that the deceased who was a minor child aged about 11 years was riding a bicycle and was hit by the offending vehicle. The F.I.R. was lodged in respect to the said accident. The appellant produced PW2-Gyan Singh as their witness, who deposed before the Tribunal that the accident had taken place by the offending vehicle. It is further submitted that the Tribunal has erred in law in disbelieving the testimony of PW2. It is contended that the Tribunal in concluding that no accident had taken place by the offending has placed reliance upon the photocopy of the receipt of

a petrol pump of Kolkata, which cannot be read in evidence, and thus, the Tribunal has erred in law in placing reliance upon the photocopy of the receipt of petrol pump to conclude that the offending vehicle was in Kolkata on the date of accident. Accordingly, it is submitted that the finding of the Tribunal holding that the accident had not taken place by the offending vehicle is perverse and against the record.

4. It is further contended that in the case of **Kurvan Ansari alias Kurvan Ali and another Vs. Shaym Kishore Murmu and another (20) 1 SCC 317**, the Apex Court has awarded compensation of Rs.4,70,000/- in case of death of a minor child. Accordingly, it is submitted that as the controversy in hand is squarely covered by the judgement of the Apex Court in **Kurvan Ansari alias Kurvan Ali (supra)**, therefore, the same amount of compensation shall be awarded to the claimant/appellant.

5. Per contra, learned counsel for the respondents has contended that the F.I.R. of the accident was lodged against an unknown vehicle and police also filed final report. It is submitted that receipt of petrol pump of Kolkata was filed containing number of the offending vehicle, which proved that the offending vehicle was in Kolkata on the date of accident. It is further submitted that the said receipt was proved by the owner of the offending vehicle as he appeared as witness in the case. Consequently, it is submitted that the Tribunal has committed no illegality in holding that the accident had not taken place by the offending vehicle.

6. Be that as it may, the claimants/appellants in order to prove the accident produced an independent witness PW2 who deposed before the Tribunal that he was behind the bicycle of the deceased on another bicycle and he saw the occurrence of the accident. The

Tribunal in deciding the issue of involvement of offending vehicle placed reliance upon the receipt of photocopy of a petrol pump at Kolkata and the testimony of owner of the offending vehicle. It is settled in law that photocopy of a document cannot be read in evidence.

7. The Tribunal has failed to record a finding how photocopy of receipt of a petrol pump at Kolkata was obtained by the owner considering the fact that there was no evidence on record proving that the owner was driving the offending vehicle or he was travelling on the offending vehicle. Accordingly, this Court is of the view that the finding of the Tribunal on the issue of occurrence of accident is perverse and not sustainable in law. Accordingly, it is held that the accident had taken place by the offending vehicle.

8. This Court has perused the original record and finds that there was a report of the licensing authority showing that the driving licence of the driver of the offending vehicle was valid. Further, the Court finds that there is a certificate of the insurance which reveals that the vehicle was also insured on the date of accident. In such view of the fact, this Court is not inclined to remand the matter to the Tribunal.

9. Since, it is a case of death of a minor child, namely, Dinesh Kumar aged about 11 years, therefore, considering the fact that the controversy in hand is squarely covered by the judgement of the Apex Court in the case of **Kurvan Ansari alias Kurvan Ali (supra)**, this Court awards the compensation of Rs.4,70,000/-.

10. The enhanced amount shall carry 6% interest from the date of institution of claim petition till the amount is paid. The respondent no.2-New India Insurance Company is directed to pay the

enhanced amount of compensation to the claimants/appellants within a period of three months from the date of production of certified copy of this order.

11. For the reasons given above, the appeal is partly **allowed** and the award is modified to the extent indicated above.

Order Date :- 16.10.2023

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