

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 650 of 1998

Appellant :- Union of India

Respondent :- Smt. Sudesh Seth

Counsel for Appellant :- S.N.Srivastava,H.C. Dubey,Manoj Kumar,Rajesh Tripathi

Counsel for Respondent :- Aijaz Ahmad Khan,Aijaz Ahmad Khan,Sunita Sharma,Vaibhav Kaushik

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 appellant challenging the award dated 28.03.1998 passed by the Additional District Judge, Moradabad (for short 'Tribunal') in M.A.C. No.139/1993.
3. Challenging the award, learned counsel for the appellant has contended that finding of tribunal that accident had taken place due to sole negligence of driver of truck No.CHW/7652 is illegal and not sustainable inasmuch as the appellant produced DW 2 Sohan Singh, who was driver of truck stated that the accident had taken place due to rash and negligent driving of the deceased who was driving the car No.URU/919. It is contended that in such view of the fact, the tribunal should have reduced the compensation to the extent of negligence of the deceased in the accident. It is further contended that the compensation awarded by the tribunal is also excessive.

4. Per contra, learned counsel for the respondents has contended that the claimant-respondent proved the negligence of driver of truck in the accident by producing PW 2 who was an independent witness of the accident. It is further contended that the tribunal has rightly disbelieved the testimony of DW 2 who was driver of the truck and was an interested witness being an employee of the appellant.

5. Be that as it may, the tribunal in deciding the issue of negligence has recorded a finding that PW 2 is an independent witness and his testimony is credible. The tribunal also considered the testimony of DW 2 and found that it was not worthy reliance. The finding of the tribunal on the issue of negligence of driver of truck is based upon proper appreciation of facts and evidence on record. Learned counsel for the appellant despite his best endeavour could not demonstrate from the record that the said finding is perverse and against the record. In such view of the fact, the submission of learned counsel for the appellant with regard to negligence of the deceased in the accident is misconceived and not sustainable.

6. So far as the issue of quantification of compensation is concerned, this Court finds that the tribunal has computed the compensation taking the salary of the deceased who was employed in a Government bank. In such view of the fact, the compensation awarded by the tribunal is just and adequate and does not call for any interference by this Court in its appellate jurisdiction.

7. Consequently, the appeal lacks merit and is **dismissed**.

Order Date :- 28.10.2023

SS