

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 97 of 2001

Appellant :- The New India Assurance Co. Ltd. Faizabad

Respondent :- Smt. Lalita Mishra And Others

Counsel for Appellant :- Rakesh Bahadur

Counsel for Respondent :- Ravindra Nath Rai, Ashok Kumar Rai, Ravindra Nath Rai, Sanjay Kumar

With

Case :- FIRST APPEAL FROM ORDER No. - 98 of 2001

Appellant :- The New India Assurance Co. Ltd. Faizabad

Respondent :- Smt. Nazma Khatoon And Others

Counsel for Appellant :- Rakesh Bahadur

Counsel for Respondent :- Shahroze Khan

With

Case :- FIRST APPEAL FROM ORDER No. - 99 of 2001

Appellant :- The New India Assurance Co. Ltd. Faizabad

Respondent :- Mohd. Sharif And Others

Counsel for Appellant :- Rakesh Bahadur

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. Since, these three appeals arise out of same accident and involve common issues, therefore, these appeals are being decided together with this common judgement.
3. The aforesaid appeals have been preferred by the appellant-insurance company against the award dated 24.11.2000 passed by the Motor Accident Claims Tribunal, Basti (hereinafter referred to as 'Tribunal') in MAC Nos.84 of 1998, 94 of 1998 and 95 of 1998 respectively.
4. For convenience, the facts are being delineated from

F.A.F.O. No.97 of 2001.

5. Challenging the award, learned counsel for the appellant has contended that in the instant case, the appellant was insurer of jeep No.UP51B/2777 which collided with truck No.UP32A/1305. It is submitted that the evidence had come on record which established that the accident was result of sole negligence of driver of the truck. Accordingly, it is submitted that the tribunal has erred in law in holding 50% negligence of the driver of jeep insured with the appellant-insurance company. It is submitted that the finding of the tribunal on the issue of contributory negligence is not sustainable and is liable to be set aside.

6. Learned counsel for the respondents has contended that the tribunal after appreciating the evidence on record held negligence of driver of both the vehicles in the accident. It is submitted that the finding of the tribunal on the issue of negligence being a finding of fact based upon proper appreciation of facts and evidence on record is not liable to be interfered with by this Court in its appellate jurisdiction.

7. Be that as it may, the tribunal in concluding the negligence of the driver of both the vehicle in the accident placed reliance upon the testimony of PW 2 who lodged the first information and also was an eye witness of the accident. According to the testimony of PW 2, the accident was result of negligence of drivers of the vehicles. The testimony of PW 2 was also corroborated by the documentary evidence on record. Learned counsel for the appellant has though tried to

demonstrate that the finding of the tribunal on the issue of contributory negligence is perverse and against the record but could not succeed in doing so.

8. Since, the finding of the tribunal on the issue of contributory negligence is a finding of fact based upon proper appreciation of facts and evidence on record, therefore, this Court is not inclined to interfere with the finding of the tribunal on the issue of contributory negligence.

9. For the reasons given above, all the appeals lack merit and are **dismissed**.

Order Date :- 6.11.2023
SS