

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1584 of 2000

Appellant :- B.L.Sanwariya And Others

Respondent :- Shri Pramod Singh And Others

Counsel for Appellant :- S.S.Shukla,H.M. Srivastava,N. Srivastava,Rajesh Kumar

Counsel for Respondent :- Radheshyam,A.K. Shukla,Om Prakash Mishra

With

Case :- FIRST APPEAL FROM ORDER No. - 1585 of 2000

Appellant :- Ramesh Kumar And Others

Respondent :- Shri Pramod Singh And Others

Counsel for Appellant :- S.S.Shukla

Counsel for Respondent :- Om Prakash Mishra,A.K.Shukla,P.S. Pandey

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants and learned counsel for the respondents.
2. Since both the appeal arise out of the common judgement and involve same issue, therefore, both the appeal are being decided by this common judgement.
3. For convenience, the facts have been delineated from F.A.F.O. No.1584 of 2000.
4. The FAFO No.1584 of 2000 has been filed by the appellant against the judgement and award dated 25.09.2000 passed by the Motor Accident Claims Tribunal/Xth Additional District Judge, Ghaziabad in MA.C.P. No.610 of 1997 & FAFO No.1585 of 2000 has been filed in M.A.C.P. No.611 of 1997.
5. Challenging the said award, learned counsel for the appellant has contended that the Tribunal has erred in law in holding that it was a case of hit and run. It is contended that the appellant produced PW2-Kishan Chand, who was an eye witness of the occurrence, who deposed before the Tribunal that he was coming in his car behind the maruti car in which the deceased were travelling and he saw that the offending Truck No.D.I.G.-8766 (hereinafter referred to as the 'offending truck')

overtook his car and hit the Maruti Car No.D.L.-4C.F.-4227 (hereinafter referred to as the 'Car') from behind. It is contended that PW3-Surendra Singh who was also sitting in the car, was produced before the Tribunal, who also proved the accident, and therefore, Tribunal has erred in law in holding that the appellants have failed to prove that the accident had taken place by the offending truck.

6. Per contra, learned counsel for the respondents would contend that it is admitted that PW3 was son of the owner of the maruti car and was also travelling along with the deceased in the car. It is submitted that as per the claimants/appellants' case, PW3 had reported the accident to the police station and the accident was noted in the Rozanamacha. It is submitted that PW3 did not disclose the number of the offending vehicle to the police nor disclosed the number of the vehicle during panchnama. Thus, it is contended that since PW3 who was an eye witness of the accident could not disclose the number of the offending truck involved in the accident, therefore, the testimony of PW2 was not credible, and the Tribunal has rightly disbelieved the testimony of PW2. Accordingly, it is submitted that the Tribunal has rightly held that it was a case of hit and run and awarded the compensation accordingly.

7. I have considered the rival submissions advanced by learned counsel for the parties and perused the record.

8. The Tribunal in concluding that it was a case of hit and run considered the testimony of PW3 who was sitting in the maruti car in which the deceased were travelling. PW3 was the person who reported the accident to the police and information in respect to the accident was recorded in Rozanamacha in which it was mentioned that the maruti car was hit from behind by unknown vehicle. PW3 did not disclose the number of the offending truck which hit the maruti car during panchnama, accordingly, the Tribunal found that since PW3 admittedly was on the spot and could not disclose the number of the vehicle which hit the maruti car, therefore, the testimony of PW2 was not credible.

9. The Tribunal further found that no charge sheet was filed by the police against the driver of truck and after considering the testimony of PW2 in detail held that the testimony of PW2 is not credible.

10. This Court is of the view that the finding of the Tribunal in disbelieving the evidence of PW2 is based upon proper appreciation of evidence on record, inasmuch as PW3 who was sitting in the car and was an eye witness of the accident could not disclose the number of the offending truck involved in the accident, then in such an event, it could not be believed that PW2 was present on the spot and could have noted the number of the vehicle. The finding of the Tribunal on the issue that the claimants/appellants failed to prove that the accident had taken place by the offending truck is based upon proper appreciation of facts and evidence on record and does not call for any interference by this Court.

11. Consequently, both the appeal lack merit and is dismissed with no order as to costs.

Order Date :- 19.10.2023/NS