

Court No. - 9

Case :- FIRST APPEAL FROM ORDER No. - 2859 of 2003

Appellant :- National Insurance Co Ltd

Respondent :- Smt. Tabassum And Others

Counsel for Appellant :- ,Anand Kumar Sinha

Counsel for Respondent :- Surendra Pal Singh, Satendra Kumar Upadhyay, Vivek Dhaka

Hon'ble Rohit Ranjan Agarwal, J.

Heard learned counsel for the appellant.

This appeal under Section 173 of Motor Vehicle Act, 1988 has been filed challenging the award dated 30.08.2003 passed by Motor Accidents Claim Tribunal/Additional District Judge, Ghaziabad in M.A.C.P. No. 443 of 2002 (Smt. Tabassum and others vs. Sri Nizam and others).

The facts in nutshell, are that the alleged accident had taken place on 05.04.2002 at around 11:30 p.m. The deceased, Mohd Shahid was travelling in Vehicle No. U.P. 14C 0801 and was going to Delhi to sell fruits. He was sitting next to the driver. The vehicle collided with Truck Trolley No. U.P. 12A 6218. Due to sudden collision which had taken place, Mohd Shahid fell down from vehicle and sustained serious injuries. He was admitted in the hospital at Modi Nagar. From there he was taken to medical college at Meerut. He, unfortunately, died on 06.04.2002.

A claim petition was filed by widow of the deceased and minor children being M.A.C.P. No. 443 of 2002. In the said case, following issues were framed:-

"1- आया कथित दुर्घटना दिनांक 5-4-2002 को समय करीब 11-30 बजे रात वाहन संख्या यूपी 14 सी-0801 डी. सी. एम. टोयटा के चालक की तेजी व लापरवाही के कारण घटित हुई, जिसमें आयी गम्भीर चोटों के कारण मोहम्मद शाहिद की मृत्यु हुई ?

2- आया कथित दुर्घटना में ट्रैक्टर संख्या यूपी 12 ए-6218 के पालक की सहदायी उपेक्षा शामिल थी, यदि हां तो प्रभाव ?

3- आया कथित दुर्घटना की दिनांक पर वाहन सं० यूपी० 14 सी -0801 के चालक के पास वैध व प्रभावी ड्राइविंग लाइसेन्स नहीं था, यदि हां तो प्रभाव ?

4- आया याचीगण कितनी प्रतिकर की धनराशि किस विपक्षी से पाने के अधिकारी है ?"

Issue nos. 1 was in regard to whether accident had taken place on 05.04.2002 at 11:30 p.m. while issue no. 2 was whether it was a case of contributory negligence of Truck Trolley No. U.P. 12A 6218.

The court below had recorded a categorical finding that it was not a contributory negligence and it was the negligence of the driver of the vehicle who was driving vehicle No. U.P. 14C-0801 in which the deceased, Mohd. Shahid was travelling.

Sri Sinha, learned counsel appearing for the appellant submitted that it was a case of contributory negligence and the liability cannot be fastened upon the Insurance Company.

I have heard learned counsel for the parties and perused the material on record.

From perusal of the finding recorded on issue nos. 1 and 2, I find that the court below has recorded specific finding that vehicle in which the deceased, Mohd. Shahid was travelling was being driven rashly and negligently and it collided with Truck Trolley No. U.P. 12A 6218 from behind.

As the finding is specific, no case of interference is made out in the order passed by Tribunal in the award made on 30.08.2003.

In view of said fact, the appeal fails and is hereby dismissed.

Order Date :- 29.11.2023

V.S.Singh