

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1642 of 2006

Appellant :- The Oriental Insurance Co. Ltd.

Respondent :- Mrs. Prama Gandhi And Others

Counsel for Appellant :- Amaresh Sinha, Amaresh Sinha

Counsel for Respondent :- Arvind Srivastava, Amitanshu Gour, Arvind Srivastava

Hon'ble Saral Srivastava, J.

Order on Civil Misc. Delay Condonation Application No.12 of 2023.

Heard learned counsel for the claimants/respondent.

The claimants/respondents have shown sufficient cause for the delay in filing the substitution application in the affidavit filed in support of the delay condonation application.

The delay in filing the substitution application is condoned.

The delay condonation application is **allowed**.

Order on Civil Misc. Substitution Application No.13 of 2023.

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

The present substitution application has been filed by the heirs of respondent No.4-Smt. Raj Rani Gandhi who died on 25.12.2020, for substituting the words 'since deceased' after the name of respondent No.4-Smt. Raj Rani Gandhi, as the legal heirs of respondent No.4 are already on record.

Learned counsel for the appellant states that he has no objection in case the substitution application is allowed.

Consequently, the substitution application is **allowed**.

Let necessary correction/substitution be incorporated during the course of day.

Order on Appeal.

1. Heard learned counsel for the appellant and learned counsel for the respondent.

2. The present appeal has been filed by the appellant-insurance company challenging the award dated 25.01.2006 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.6, Bulandshahar in M.A.C.P. No.43/2002.

3. Challenging the award, learned counsel for the appellant has contended that it was a case of accident of two vehicles namely motorcycle No.UP-13-E-6283 and Tata Sumo No.H.R.16C2311 insured with the appellant insurance company. It is contended that the deceased was riding motorcycle and he was driving the motorcycle rashly and negligently due to which the accident had occurred. It is submitted that the negligence of the deceased was proved by the appellant insurance company by producing DW-1 who categorically deposed that he was in Tata Sumo at the time of accident. Accordingly, it is contended that since the insurance company has led evidence on record proving the negligence of the deceased in the accident and considering the fact that it was a case of head on collision between two vehicles namely motorcycle and Tata Sumo, the Tribunal should have apportioned the negligence to the extent of 50% equally against the driver of both the vehicles. Accordingly, it is contended that the compensation needs to be reduced by 50% for the negligence of the deceased in the accident. It is further contended that the compensation awarded by the Tribunal is excessive inasmuch as the Tribunal should have

deducted the amount paid by the deceased towards LIC, society charge and HRA.

4. Per contra, learned counsel for the respondents would contend that the respondents/claimants produced PW-2- Pawan Kumar who was eyewitness of the accident and lodged the FIR. It is contended that the Tribunal in detail considered the testimony of PW-2 and found that the testimony of PW-2 is credible. The Tribunal also considered the testimony of DW-1 and found that the testimony of DW-1 was inconsistent. Testimony of DW-1 discloses that he was not present on the spot of the accident. Accordingly, the Tribunal has rightly relied upon the testimony of PW-2 and rightly held that the accident was the result of rash and negligent driving of driver of Tata Sumo. It is further contended that the Tribunal has rightly not deducted from the compensation the amount paid by the deceased towards LIC, society charges and HRA.

5. I have considered the rival contentions of learned counsel for the parties and perused the record.

6. In deciding the issue of contributory negligence, the Tribunal considered the testimony of PW-2 who was eyewitness of the accident and lodged the F.I.R. immediately after occurrence of the accident. He deposed that he saw that the driver of Tata Sumo was driving the vehicle rashly and negligently which collided with the motorcycle. He categorically stated that the accident was the result of negligence of driver of Tata Sumo. The Tribunal found the consistency in the testimony of PW-2 and accordingly relied upon it in deciding the issue of negligence.

7. The Tribunal thereafter considered the testimony of DW-1 and found it inconsistent on the ground that DW-1 has stated that Tata Sumo was seized immediately after the accident by the police and

the driver of Tata Sumo ran away from the place of the accident. The Tribunal found that Tata Sumo was seized by Kashmiri Gate Police and was handed over to the Jahangirabad police on 01.12.2002 and the accident had taken place on 28.11.2001. Accordingly, the Tribunal found that the statement of DW-1 that Tata Sumo was seized by the police on the spot of the accident was false, and accordingly, it recorded a finding that DW-1 was not present on the spot. The finding recorded by the Tribunal on the issue of negligence is based upon the proper appreciation of the evidence on record. Learned counsel for the appellant despite his best endeavor could not demonstrate that the finding of the Tribunal on the issue of negligence is perverse and against the record. In such view of the fact, the finding of the Tribunal on the issue of negligence being a finding of fact is not liable to be interfered with by this Court in its appellate jurisdiction.

8. So far as the issue of quantification of compensation is concerned, this Court may note that the Tribunal has not rightly deducted any amount received by the deceased as HRA and the amount paid by him as LIC society charges in view of the judgment of Apex Court in the case of **Vimal Kanwar and Others Vs. Kishore Dan and others, 2013(3) TAC 6 (SC)**.

9. For the reasons given above, the appeal lacks merit and is accordingly ***dismissed*** without any order as to costs.

Order Date :- 13.10.2023
R.S. Tiwari