

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 558 of 2007

Appellant :- Rajendra Prasad Gupta

Respondent :- U.P.S.R.T.C.And Others

Counsel for Appellant :- Sanjay Agarwal,B.N.Agrawal

Hon'ble Saral Srivastava,J.

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

2. The present appeal has been preferred by the claimant/appellant against the judgement and award dated 30.10.2006 passed by the Motor Accident Claims Tribunal/Additional District Judge/Special Judge (D.A.A.Act), Agra in M.A.C.P. No.628 of 2005.

3. Challenging the aforesaid award, learned counsel for the appellants has contended that the Tribunal has erred in law in holding the negligence of the appellant to the extent of 50% in the accident. It is submitted that the claimant-appellant appeared as witness and also produced the pillion rider Sri Bhagwan Singh as PW-2, who in his testimony has stated that the accident had taken place due to rash and negligent driving of driver of Bus No. UP-85M 9030 (hereinafter referred as the 'offending bus'). It is further contended that the F.I.R. was lodged against the driver of the offending bus and police has also submitted charge sheet against the driver of the offending bus. It is further submitted that the testimony of appellant and PW-2 is also corroborated by the site plan of the accident, inasmuch as the site plan of accident reflects that the appellant was going from North to South on the left side of the road and offending bus was moving from South to North came across the road and hit the motorcycle. Accordingly, it is submitted that

accident occurred due to sole negligence of driver of offending bus. Hence, Tribunal has erred in law in holding the negligence of appellant to the extent of 50% in the accident. It is further submitted that admittedly the appellant has suffered injuries in the accident and the Tribunal has awarded Rs. 50,000/- to the appellant and has not awarded any amount towards special diet and the expenses incurred in keeping an attendant. Accordingly, it is submitted that compensation needs to be enhanced.

4. The Court has perused the record of the case and finds that the charge-sheet was filed against the driver of the offending bus, and site plan of accident also reflects that the accident was result of sole negligence of driver of the offending bus. Site plan of the accident and the charge sheet against the driver corroborate the testimony of PW-1 and PW-2 in respect to the fact that the accident was the result of negligence of driver of the offending bus.

5. Though, the U.P.S.R.T.C.-respondent produced its driver Veerpal Singh as DW1. However, the Tribunal did not believe the statement of DW-1-driver of the bus. In view of the testimony of PW-1 and PW-2, once it has been proved by the claimant-appellant that the accident was the result of sole negligence of driver of the offending bus, the Tribunal has erred in law in holding 50% negligence of appellant in the accident. Accordingly, the finding of Tribunal holding 50% negligence of the claimant-appellant is set aside and it is held that the accident was the result of sole negligence of driver of the offending bus.

6. The Court finds that in the instant case, the Tribunal has not awarded any amount towards special diet and expenses incurred in keeping an attendant as the appellant was under treatment for long time, therefore, this Court is of the view that the amount of

Rs. 30,000/- awarded under the aforesaid head is not adequate, and in such view of the fact, this Court awards Rs. 70,000/- in lump sum under the aforesaid head.

7. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the date of its payment.

8. Thus, for the reasons given above, the appeal is partly ***allowed*** and the award of the Tribunal is modified to the extent indicated above. The insurance company is directed to pay the enhanced amount of compensation to the claimant within a period of three months from the date of production of a certified copy of this order. There shall be no order as to costs.

Order Date :- 12.10.2023

Vikram