

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 23 of 2011

Appellant :- U.P. State Road Transport Corp. Thru Regional Manager

Respondent :- Shameem And Another

Counsel for Appellant :- Jadu Nandan Yadav, Renu Mishra, Sunil Kumar Mishra, Vikas Sahai

Counsel for Respondent :- Anurag Sharma

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed against the award dated 22.09.2010 passed by Motor Accident Claims Tribunal, Meerut in MAC No.831 of 2009, whereby the the tribunal has awarded a compensation of Rs.2,36,600/- alongwith 6% interest from the date of institution of claim petition for the injuries suffered by the claimant in an accident on 18.05.2009 with bus no.UP21N/6401.
3. Challenging the award, learned counsel for the appellant has contended that as per the injury report, the claimant-respondent suffered only three injuries which were minor in nature. The disability certificate filed by the claimant-respondent was issued by a private doctor showing insertion of a rod in right hand and on the basis of such injuries, the doctor assessed 50% disability of the claimant-respondent. It is submitted that the said disability certificate is not worth reliance as the same has been issued by a private doctor and

was contrary to the injury report which was submitted by the claimant-respondent. Accordingly, it is submitted that the compensation awarded by the tribunal treating the disability of the claimant-respondent to be 30% on the basis of disability certificate is illegal and not sustainable in law. It is further contended that the claimant-respondent was the owner of the camel cart and the tribunal has erred in law in awarding Rs.20,000/- for damage of camel cart and death of camel in the accident.

4. Per contra, learned counsel for the respondents has contended that the disability certificate was issued by a private doctor which was proved by the doctor and accordingly, it is submitted that the tribunal has rightly held 30% disability suffered by the claimant-respondent. It is further submitted that the tribunal has recorded a categorical finding on the basis of testimony of the witness of claimant-respondent as well as witness of accident that the camel cart of the claimant-respondent was damaged and the camel of the claimant-respondent died and accordingly, the tribunal has rightly awarded Rs.20,000/- for damage of camel cart and death of the camel in the accident.

5. Be that as it may, though, it has been vehemently contended by learned counsel for the appellant that the injury report filed by the claimant-respondent is not consistent with the disability certificate filed by the claimant-respondent inasmuch as the injuries indicated in the injury report filed by the claimant-respondent does not indicate that the injury of

the claimant-respondent was such in which the hand of the claimant-respondent was to be operated and a rod be inserted in the hand and therefore, the assessment of disability to the tune of 30% by the tribunal on the basis of disability certificate issued by a private doctor is illegal and not sustainable, but the fact remains that it is not disputed by the appellant that the claimant-respondent had suffered injuries in the accident and is entitled to compensation. The claimant-respondent is also entitled to 40% future prospect in view of the judgement of the Apex Court in the case of **Pappu Deo Yadav Vs. Naresh Kumar & Others AIR 2020 SC 4424** which has not been awarded by the tribunal in this case. In such view of the fact, this Court is not inclined to interfere with the quantification of compensation inasmuch as if the tribunal had awarded 40% towards future prospect and the compensation had been computed treating less loss earning capacity, the amount would almost have been the same.

6. So far as the award of Rs.20,000/- by the tribunal for death of camel and damage of camel cart is concerned, the tribunal after appreciating the evidence on record held that the camel cart of claimant-respondent was damaged and the camel had died and the finding of the tribunal in this respect is a finding of fact and is not liable to be interfered with by this Court. In such view of the fact, the appeal lacks merit and is **dismissed**.

Order Date :- 13.10.2023

SS