

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 193 of 2000

Appellant :- The New India Assurance Company Ltd.

Respondent :- Smt. Suman Jaiswal And Others

Counsel for Appellant :- V.B.Srivastava,T.J.S. Makker

Counsel for Respondent :- A.K.Srivastava,Abdul
Saeed,G.S.Srivastava,V.K.Srivastava

Hon'ble Jaspreet Singh,J.

1. Heard Shri T.J.S. Makker, learned counsel for the appellant. None has put in appearance on behalf of the respondent to argue the appeal.

2. This appeal is of the year 2000 and is listed under the head that 'the case shall not be adjourned' and accordingly, the Court has proceeded to hear learned counsel for the appellant in absence of learned counsel of the respondents.

3. By means of the instant appeal preferred under Section 173 of the Motor Vehicles Act, 1988, the Insurance Company has assailed the award dated 11.01.2000 passed in Claim Petition No.38 of 1988, whereby the MACT/Special Additional Judge, Raebareli has awarded a sum of Rs.2,87,600/- along with 12% interest per annum.

4. Learned counsel for the appellant has primarily assailed the award on the premise that the findings recorded by the Tribunal are not borne out from the record. It is urged that while considering the issue of license as well as the insurance policy, the Tribunal has not taken a view on the basis of the report. Moreover, even while granting the award, interest has been awarded on much higher side and for the aforesaid reasons, the award deserves to be set aside. It is also urged that it is a clear case of contributory negligence, which has also not been appropriately considered by the Tribunal.

5. The facts giving rise to the instant appeal are being noticed first in order to appreciate the contention of learned counsel for the appellant.

6. The record indicates that on 10.05.1988 at around 10:00 pm, Uma Shankar Singh was riding his motorcycle bearing No. UGB 1350 and Uma Prasad Jaiswal was sitting as a pillion rider and they were traveling on Allahabad-Lucknow Highway. It is stated that truck bearing No.URA 4794, which was being driven by Ram Nath Tiwari rashly and negligently came on the wrong

side and hit the motorcycle. As a result, Uma Prasad Jaisawal sustained grievous injuries and he was taken to District Hospital, Raebareli. From where, he was referred to a higher center at Medial College, Lucknow, where he succumbed to his injuries. In view of the aforesaid, claimants filed C.P. No.38 of 1988 and it came to be contested by the owner of the vehicle as well as insurance company. The primary defense was that the truck was on its right side and it was rash and negligent driving of the motorcyclist, which caused the accident. Thus, it was stated that truck driver was not negligent. The insurance company apart from raising the general defenses that the offending vehicle did not have a valid license or necessary paper. It also took a plea that it was the case of contributory negligence.

7. Upon exchange of the pleadings, seven issues were framed. The trial court after considering the oral and documentary evidence filed by the respective parties while dealing with issue Nos.1 and 2 concluded that the accident, which occurred on 10.05.1988 by the truck bearing No. URA 4794 was caused due to rash and negligent driving by its driver, which resulted in grievous injuries to Uma Prasad Jaisawal, who succumbed to his injuries on 23.05.1988. The Tribunal also found that the offending vehicle was duly insured and that its driver had a proper license and also had the fitness certificate relating to the vehicle. The trial court also noticed that there was no case of contributory negligence as it was established that the truck had come on the wrong side and hit the motorcycle. Thereafter, it went to compute the compensation and awarded a sum of Rs.2,87,600/- along with 12% per annum by means of award dated 11.01.2000, which is under challenge before this Court.

8. Having heard learned counsel for the appellant, this Court finds that the issue raised by learned counsel for the appellant that is the issue of contributory negligence is absolutely misconceived. The record clearly reflects that the deceased Uma Prasad Jaisawal was a pillion rider on the motorcycle. There is clear evidence to the fact that the offending truck had come on the wrong side and hit the motorcycle, which caused the accident. There is nothing on record to indicate that Uma Prasad Jaisawal had contributed to the cause of accident. Thus, the finding returned by the Tribunal on the aforesaid ground is based on sound reasoning coupled with the fact that learned counsel for the appellant could not establish how a pillion rider caused or contributed to the accident.

9. Insofar as the submission of learned counsel for the appellant regarding rate of interest is concerned, this Court is not inclined to interfere therein since the accident in question is related to

the year 1988 and the award has been passed in the year 2000. The rate of interest as awarded is just and appropriate. Consequently, this submission also fails.

10. Insofar as the other submission raised by learned counsel for the appellant is concerned, this Court has considered the record as well as findings recorded by the Tribunal and there is no discrepancy. There was ample evidence to indicate that the offending truck was duly insured and its driver had a valid license and also the fitness certificate. Learned counsel for the appellant could not dispute that the computation of the compensation is in any manner erroneous. This Court finds that the appeal for the forgoing reasons is devoid of merits and is liable to be dismissed.

11. Before parting, this Court notices that a large number of appeals arising out of motor accident claims cases are pending before this Court and many of them have been filed by the Insurance Companies. In light of the decisions rendered by the Apex Court, to name a few, **National Insurance Company Ltd. v. Swaran Singh, (2004) 3 SCC 297, Sarla Verma Vs. Delhi Transport Corporation and another 2009 (6) SCC 121, National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680, Magma General Insurance Company Ltds. Vs. Nanu Ram 2018 SCC OnLine SC 1546, Sunita and others Vs. Rajasthan State Road Transport Corporation & another 2019 SCC OnLine SC 195 and Anita Sharma and others Vs. New India Assurance Company Limited and another (2021) SCC 171**, it would be seen that practically large portions of the debatable issues have been clarified by the Apex Court in the aforesaid judgments. The scope of contest is now in a narrow parameters. In this view of the matter, this Court is of the opinion that it is time that the Insurance Companies must undertake an exercise to periodically screen the pending appeals specially which have been filed on the issue of quantum and must take a conscious decision with help of their legal departments/counsel as to whether to pursue the appeals or to take appropriate measures so that the matters can be given a quietus, in light of the decisions and the position of law which have been clarified and settled by the Apex Court and the High Courts.

12. In this way, not only the precious time of Courts can be saved which can be utilized for other important matters but the claimants will also be able to get their dues expeditiously and the Insurance Company will also be able to save the collateral costs of increased payments towards interest.

13. Even though Lok Adalats are being held at frequent

intervals yet there is no encouraging contribution from the Insurance Companies and it would be in the fitness of things that the Insurance Companies start taking a re-look and re-consider regarding pending appeals. Had the aforesaid exercise been taken the appeal should have been disposed of much earlier especially when it was clear that the only substantive ground raised was in respect of contributory negligence but it should have been realized as to how a pillion rider could have contribute to the said accident. To illustrate the point in question, the instant appeal is one such glaring example, which is being decided after about 23 years.

14. In view of the aforesaid, the appeal is dismissed and as a token cost of Rs.5,000/- is being imposed which shall be payable by the Insurance Company to the State Legal Services Authority within 30 days from today and the receipt shall also be placed before the Tribunal. In case if the amount is not paid, the Tribunal shall recover the same.

15. Accordingly, the award dated 11.01.2000 passed in C.P. No.38 of 1988 is affirmed and the appeal is dismissed. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimant-respondents and any short fall shall also be made by the Insurance company with up to date interest to the claimants-respondents within 60 days from today.

16. Record of the court concerned shall be returned forthwith.

Order Date :- 23.11.2023

Ashutosh Pandey