

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 697 of 2002

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

Respondent :- Yashoda Devi And 6 Ors.

Counsel for Appellant :- D.K. Srivastava, Akhilesh Kumar
Srivastava, Dharendra Chaturvedi, Prabhakar Tewari, Tahir Abbas
Rizvi

Counsel for Respondent :- Prasoon Kumar Rai

Hon'ble Jaspreet Singh, J.

Heard Shri Dharendra Chaturvedi, learned counsel for the appellant and Shri Prasoon Kumar Rai, learned counsel for the respondent No.7 Insurance Company.

The instant appeal has been preferred by the appellant UPSRTC under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 05.04.2002 whereby the ADJ/MACT, Raebareli in a death case made an award of Rs.2,00,000/- payable to the claimants along with 9% interest. However, while passing of the said award, it fixed the liability on the appellant Corporation.

The appeal was reported to be barred by limitation by five months.

Upon the application seeking condonation of delay, notices were issued and the record indicates that the service on the respondent No.1 to 4, 6 and 7 was sufficient. The ground shown for condonation of delay is found cogent and justified. Accordingly, the delay is condoned and the appeal shall be treated to be filed within time.

Since, a very short question is involved in the instant appeal and that is also confined to the fact that in the given facts and circumstances where the bus which belonged to UPSRTC and involved in the accident and it was also duly insured with the respondent No.7 then under such circumstances who was liable to indemnify the award, is the core question for consideration.

The submission of the learned counsel for the appellant is that in light of the decision of the Apex Court in **Uttar Pradesh State Road Transport Corporation v. Kulsum and others, 2011 (29) LCD 1648**, this matter has already been decided and

in light of the aforesaid decision, the liability would vest with the Insurance Company. In the aforesaid circumstances, it is urged that the award is to be satisfied by the respondent No.7.

Shri Prasoon Kumar Rai, learned counsel for the respondent No.7 Insurance Company submits that insofar as the dictum of the Apex Court is concerned, there is perhaps no dispute, but the fact remains that in the instant appeal was filed in the year 2002 and the respondent No.7 could served in the year 2018 and they have filed its Vakalatnama. Thus, in the aforesaid circumstances, the liability and the interest which accrues from the date of the application that may be modified to the extent that the respondent No.7 may service the award with interest from the year 2018 when the respondent was served, to enable the respondent No.7 to comply with the award.

Insofar as the facts of the case are concerned, there is perhaps no dispute regarding the accident, the death as well as the involvement of the bus in question.

The Tribunal after considering the evidence had awarded a sum of Rs.2,00,000/- along with 9% interest by means of the award dated 05.04.2002 which is also not in dispute. Thus, the findings recorded by the Tribunal on the aforesaid issues are final.

In light of the decision of the Apex Court in **Kulsum** (supra) which was followed by this Court in **U.P. Rajya Sadak Parivahan Nigam v. Smt. Shyam Kali and others, decided on 16.04.2019 (FAFO No.526/2011)**, the liability to service the said award and indemnify the same rests squarely with the respondent No.7.

In view of the aforesaid, the submission that since the respondent has to be served in the year 2018, accordingly, they may be granted the benefit of exemption of payment of interest is not justified as the interest which is applicable on the amount is in terms of statutory powers conferred under the Motor Vehicles Act, 1988.

Considering the facts and circumstances, this Court modifies the award dated 05.04.2002 passed in Claim Petition No.142/1994 to the extent that the awarded sum shall be paid by the respondent No.7.

Learned counsel for the appellant has informed that the awarded sum of Rs.2,00,000/- was deposited by the appellant before the MACT concerned on 09.08.2005. Accordingly, it is provided that if the amount has been so deposited, the same

shall be payable to the appellant by the respondent No.7 Insurance Company and the statutory amount of Rs.25,000/- deposited before this Court by the appellant shall be released in favour of the appellant. Any amount which may still be outstanding and payable to the claimants shall be paid by the Insurance Company i.e. respondent No.7 in terms of the award with up-to-date interest.

In light of the aforesaid facts and circumstances, subject to the aforesaid modification of the award dated 05.04.2002 the appeal is allowed. Costs are made easy.

Order Date :- 28.11.2023

Rakesh/-