

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 555 of 2015

Appellant :- The National Insurance Comp. Ltd.
Through Manager Lko.

Respondent :- Atul Agnihotri And Another

Counsel for Appellant :- U.P.S.Kushwaha,Ajeet
Srivastav

Counsel for Respondent :- Rajat Pratap Singh

Alongwith

Case :- FIRST APPEAL FROM ORDER No. - 547 of 2015

Appellant :- National Insurance Co. Ltd. Lucknow
Thru. The Manager

Respondent :- Smt. Sheelu Shukla And 2 Others

Counsel for Appellant :- U.P.S. Kushwaha,Ajeet
Srivastav

Counsel for Respondent :- Rajat Pratap Singh

Hon'ble Jaspreet Singh,J.

1. These two appeals have been filed by the Insurance Company assailing the award dated 07.02.2015 passed in Claim Petition No.10 of 2013 wherein in a death case, the Tribunal has awarded a sum of Rs.4,41,500/- alongwith 6% interest which has given rise to FAFO No.555 of 2015 whereas in the same accident, a child had also died whose claim petition was filed by her mother bearing No.9 of 2013 wherein a sum of Rs.2,74,500/- alongwith 6% interest was granted by the Tribunal which has given rise to FAFO No.547 of 2015.

2. Since the issue involved in both the appeals are common, accordingly both were connected and were heard together and are being decided by this common judgment.

3. Briefly, the facts giving rise to the instant

appeals are that on 17.05.2011 the claimant of Claim Petition No.10 of 2013 alongwith his wife Smt. Seema, his mother Smt. Laxmi and relatives, namely, Renu, Amit and two children Vanshika and Shrishti were travelling in car bearing number DL 9CQ/0246. Atul Agnihotri was driving the car and was travelling from Gram Mohana to Kannauj. At around 5.00 P.M. when the said car was on G.T. Road and had reached near Kallu Hotel, at that particular point of time, the tyre of the car burst and since the said car was in speed, the driver could not control the same as a result the car dashed against a boundary wall of the property, situate on the road side which resulted in injuries to all the occupants of the car. In the said accident, Smt. Seema wife of Atul Agnihotri and another child Km. Vanshika were declared dead.

4. It is in the aforesaid context, Atul Agnihotri filed Claim Petition No.10 of 2013 for the claim of his wife whereas another Claim Petition No.9 of 2013 was filed by Smt. Sheelu Shukla for the death of her daughter Km. Vanshika.

5. Both the petitions were filed under Section 163-A of the Motor Vehicle Act and the Tribunal after due trial found that the vehicle in question was duly insured and the driver was having a valid and a subsisting licence, consequently since the death of Smt. Seema and Km. Vanshika was on account of use of a motor vehicle, consequently it awarded a sum of Rs.4,41,500/- alongwith 6% interest in Claim Petition No.10 of 2013 and a sum of Rs.2,74,500/- alongwith 6% interest in Claim Petition No.9 of 2013.

6. Insurance Company has assailed the award dated 07.02.2015 passed in two claim petitions and Shri Ajit Srivastava, learned counsel appearing for the Insurance Company submits that since the accident was on account of the own negligence of the driver, accordingly claimant Atul Agnihotri was not entitled to receive compensation. It is further urged that in so far as Km. Vanshika is concerned, she was merely eight years old and in such a case the award made by the Tribunal is also much higher side rather a notional compensation ought to have been given. It is, thus, submitted that the

award passed in the two claim petitions were apparently erroneous and deserves to be set aside.

7. Shri Rajat Pratap Singh, learned counsel appearing for the claimant-respondents submits that the petitions were filed before the Tribunal under Section 163-A of the Motor Vehicle Act wherein the negligence were not required to be established. The fact that an accident did take place wherein Smt. Seema as well as Km. Vanshika expired, in such circumstances, the Tribunal was justified in making the award and since the vehicle in question was duly insured, accordingly the award has to be indemnified by the Insurance Company and the appeals are devoid of merits, accordingly deserves to be dismissed.

8. The Court has considered the rival submissions and perused the material on record.

9. This Court finds that the claim petitions were filed under Section 163-A of the Motor Vehicle Act. In petition filed under the aforesaid section, negligence is not to be proved, the only criteria that has to be established is that an accident has occurred which has resulted in death or injury which is on account of use of a motor vehicle.

10. Having considered the pleadings as well as the evidence led before the Tribunal, it could not be disputed by the counsel for the appellant that the accident did occur and as stated that there was a tyre burst which led to the accident and therefore the persons who expired that is Smt. Seema may have been the wife of the driver but nevertheless she was an occupant of the car so also Km. Vanshika was also an occupant and in the said accident both lost their lives. In view thereof the claimant Atul Agnihotri was entitled to claim compensation on account of the death of his wife and so the claimant Ms. Sheelu Shukla was entitled to claim compensation for her daughter. There is not dispute on the fact that Atul Agnihotri was driving car and had a valid licence and that insurance of the car was valid and subsisting. In view of the aforesaid, the Tribunal has recorded finding which could not be disputed by the counsel

for the appellant to be perverse or based on inadmissible evidence nor it was a case of no evidence.

11. In so far as the submission regarding notional award for the minor girl Km. Vanshikal is concerned, the said argument is misconceived and is noticed to be rejected ***[see Kajal Vs. Jagdish Chand 2020 SCC Online SC 127]***

12. In view of the aforesaid, this Court does not find that there is any error committed by the Tribunal, accordingly the appeals are devoid of merits and are consequently dismissed. The award dated 07.02.2015 passed in Claim Petition No.10 of 2013 and Claim Petition No.9 of 2013 are affirmed. Any amount deposited by the appellant-Company before this Court shall be remitted to the Tribunal to be released in favour of the claimant-respondents and any shortfall shall also be paid to the claimant-respondents in accordance with the award within a period of sixty days from today.

13. For the aforesaid reasons, both the appeals are **dismissed**. In the facts and circumstances, there shall be no order as to costs. The record of the Tribunal be returned forthwith.

Order Date :- 18.10.2023

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