

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 694 of 2016

Appellant :- National Insurance Co. Ltd. Lucknow
Thru.Manager Legal Deptt

Respondent :- Geeta Devi @ Urmila Devi And 6 Others

Counsel for Appellant :- Pradeep Kumar Rai

Counsel for Respondent :- Akbar Ali
Khan,Akhilesh Kumar Srivastava,Manzar Ali
Khan,Pramod Kumar Shukla

Hon'ble Jaspreet Singh,J.

1. Heard Shri Pradeep Kumar Rai, learned counsel for the appellant and Shri Manzar Ali Khan for the claimant-respondents.
2. None has put in appearance on behalf of the respondents no.6 and 7, accordingly, the Court has heard the appeal in their absence.
3. The instant appeal has been filed by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 26.03.2016 passed in Claim Petition No.108 of 2012 by Motor Accident Claims Tribunal/Additional District Judge, Court No.2, Lakhimpur Kheri wherein in a death case, the Tribunal has awarded a sum of Rs.24,76,256 alongwith 7% interest payable per annum to the claimant-respondents.
4. The claimant-respondents no.1 to 5 filed a claim petition bearing No.108 of 2012 stating therein that on 26.02.2016 at around 6.45 in the evening, Natthu Lal was walking from his village on the Mohammadi Gola Marg towards Gola. As he reached near Ghirawa Bend, the offending Maruti Car bearing number U.P. 34-A/1827 which was being driven rashly and negligently hit Natthu Lal and he expired on the spot. It was also stated that Natthu Lal was a teacher and he was earning a sum of Rs.36,829/- per month and on account of his death, his heirs and representatives filed the

claim petition. The claim petition came to be contested by the owner driver and the Insurance Company by filing their separate written statement.

5. In so far as the owner and driver are concerned, they stated that the accident did not take place with the vehicle whereas the driver denied that the accident was an outcome of his rash and negligent driving. The owner further stated that his vehicle was duly insured and its driver also had a valid and a subsisting driving licence, thus if at all any award is passed, it would be the responsibility of the Insurance Company to indemnify the same.

6. Upon the exchange of the pleadings, the Tribunal framed four issues. However, while dealing the issue regrading rash and negligent driving, the Tribunal took note of the statement of P.W.3, who was an eye witness as well as the documents relating to the accident such as the First Information Report, charge-sheet, medical report, post-mortem report, salary slip as well as the Insurance Policy and the licence and came to the conclusion that the accident was an outcome of rash and negligent driving of the Maruti Car. The Tribunal went on to compute the compensation and awarded a sum of Rs.24,76,256/- alongwith 7% interest which is under challenge.

7. Shri Pradeep Kumar Rai, learned counsel for the Insurance Company has submitted that the claim petition was filed under Section 166 of the Motor Vehicles Act. Before any amount can be awarded, it is the duty of the Tribunal first to ascertain that the accident was an outcome of rash and negligent driving of the vehicle involved in the accident, in case if the negligence is not proved, then no amount can be granted towards compensation.

8. Elaborating his submissions, it is urged that in the instant case, there is a clear testimony of the P.W.1, who is the wife of the deceased and P.W.2 the son of the deceased, who clearly stated, that they were not present at the accidental side. It is pointed out by the counsel for the appellant that in

the statement made by the P.W.2, he had stated that he was present at the accidental site and thus he attempted to project that he was an eye-witness. On the contrary, if the statement of P.W.3, namely, Dinesh Kumar is seen, he stated that he was present and had seen the accident and thereafter he had called the wife of the deceased informing her regarding the accident and later the sons of the deceased came to the accidental site. It is thus submitted that the statement of the P.W.2 in light of the statement of P.W.3 stands falsified.

9. It has further been pointed out that even in the testimony of P.W.3, it revealed that the accident occurred around 6.45 P.M. in the month of February 2012 which indicates that it was dark and in this backdrop, the statement of P.W.3 that he had seen the vehicle from a distance of about 22 yards is not quite plausible and thus this inherent discrepancy has been ignored. Neither the P.W.1 and P.W.2 have deposed regarding the negligence of the offending vehicle driver and even the statement of the P.W.3 becomes doubtful as it was not plausible for him to have seen in the dark regarding the negligence and thus the Tribunal has erred in ignoring this aspect and once the negligence is not established, the award in itself becomes bad and is liable to be set aside.

10. Shri Manjar Ali Khan, learned counsel for the respondents states that in the claim petition, it has not been stated that the P.W.2 was at the site. A minor discrepancy in the statement of a witness is not going to cast any doubt over the occurrence. In so far as the statement of P.W.3 is concerned, it cannot be doubted that he had seen the accident. In his cross-examination, he has affirmed his presence as well as that he had seen accident, it was on account of rash and negligent driving of the driver of the offending car that Natthu Lal lost his life.

11. In light of the aforesaid statements, the Tribunal has rightly concluded that the accident was on account of rash and negligent driving of the car. The alleged statement which is sought to be relied upon by the appellant is that of the surveyor of the Insurance Company who in turn

relies upon the testimony of the Gram Pradhan to state that the driver of the offending car was not negligent. It is urged that the statement of the surveyor is completely unreliable, in admissible in evidence and as such could not have been noticed by the Tribunal.

12. As far as the statement of D.W.1 i.e. the driver of the car is concerned, even he could not deny the fact that an First Information Report was lodged and he was facing criminal trial in respect of the accident. In this view of the matter, the Tribunal has rightly held that the accident was on account of rash and negligent driving and the award has been passed which requires no interference and the appeal deserves to be dismissed.

13. The Court has heard the learned counsel for the parties and also perused the material on record.

14. At the outset, it may be noticed that the findings returned by the Tribunal in so far as the Insurance and the driving licence of the driver is concerned, are not under challenge. The only issue raised is regarding the rash and negligent driving of the driver of the car. No other findings have been attacked by the appellant.

15. Apparently, from the claim petition, it would indicate that Natthu Lal on 26.02.2012 at around 6.45 P.M. was walking at the side of the road and was going towards Gola. It was stated that the driver of Maruti Car bearing number UP 34-A/1827 was being driven rashly and negligently and he hit Natthu Lal who sustained grievous injuries and while he was taken to the Community Health Centre, where, he was declared dead. It was stated that there is no clear statement in the claim petition to state that the P.W.2 was present at the site. As far as P.W.1 is concerned, namely, Smt. Geeta Devi the wife of the deceased, she clearly stated that she was not at the site and thus the statement was only formal in nature. As far as the P.W.2 Ram Sanahi is concerned, he was the son of Natthu Lal and though in his examination-in-chief, he states that he is an eye witness but in his cross-

examination, there was no clear suggestion regarding his presence at the site at the time of the accident. Though an attempt has been made to question him on this account as it was deposed by him that though he had got the First Information Report lodged but in the First Information Report, he did not mention that he was an eye witness.

16. It is from the statement of P.W.3 Dinesh Kumar that it was ascertained that he had seen the car hitting the deceased as the car driver had come on the wrong side of the road and he hit the deceased, who died. He has clearly indicated and described the manner in which the accident took place. He further stated that he was at around 20 to 25 steps distance from where the accident occurred and that he had seen that the offending car had come on the wrong side and was two meters from the centre of the road on the wrong side and hit the deceased. He further stated that the driver after the accident fled from the site and it is in this context, it was noticed by the Tribunal that the driver of the offending vehicle had caused the accident.

17. Shri Palvinder Singh was examined on behalf of the defendants who is the driver of the vehicle and he admitted that he had a valid licence and that he was apprehended in the criminal case and he had taken bail. He further admitted in his cross examination that against him a criminal case is pending before the court concerned and though he did not know the next date fixed but he attends the proceedings. He further admitted that the accident occurred at Ghirawa Bend and that he had left the car and ran away from the site and the offending car was released from the court.

18. Having noticed the aforesaid statement of the driver where there is a clear admission regarding the accident and the fact that he fled from the site and he got the car released from the Court and is facing criminal trial. This clearly is an admission on the part of the driver. From the perusal of the testimony of P.W.3 who is also an eye witness, who have also deposed that the car came on the wrong side and its driver after the accident had fled.

Confirms the authenticity of the statement of P.W.3 as well. In light of the statement of P.W.3 and Palvinder Singh the driver, it is not open for the Insurance Company to state that there was a discrepancy in the statement of the P.W.2 and P.W.3.

19. For the sake of argument, even if at all the statement of P.W.2 is ignored even then on the basis of admission contained in the testimony of the driver, it is a clear case indicating the accident occurred leading to the death of Natthu Lal. There is no denial of the fact that the car came on the wrong side and hit Natthu Lal who was walking on the side of the road. The statement of P.W.3 also stands corroborated from the statement of D.W.1 Palvinder Singh and thus it cannot be said that P.W.3 could not have seen the accident. In light of the aforesaid, this Court is satisfied that the findings returned by the Tribunal regarding rash and negligent driving is appropriate and is based on the material evidence available on record.

20. It may be relevant to notice that the claim petitions under the motor vehicles Act are decided on the basis of preponderance of probabilities and is not to be proved beyond all reasonable doubt. In the instant case, the testimony of P.W.3 and D.W. 1 Palvinder Singh was sufficient to return a finding of the accident having occurred on account of rash and negligent driving of the driver of the offending car which has been appropriately noticed by the Tribunal.

21. This Court does not find that there is any merit in the appeal which is accordingly dismissed. The award dated 26.03.2016 passed in Claim Petition No.108 of 2012 is affirmed. Costs are made easy. The record of the Tribunal will be returned forthwith.

22. The statutory amount or any other amount which may have been deposited by the appellant before this Court in terms of the interim order dated 27.07.2016 shall be remitted to the Tribunal to be released in favour of the claimant-respondents in accordance with the award and the outstanding sum, if any, shall be paid by the

Insurance Company to the claimant-respondents with upto date interest within 60 days from the date a copy of this order is placed before the Authority.

Order Date :- 8.12.2023

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