

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 279 of 1998

Appellant :- The National Insurance Co. Ltd.

Respondent :- Smt. Anita Singh And Others

Counsel for Appellant :- R.C.Sharma

Counsel for Respondent :- K.C.Mehta, Anil Kumar

Srivastava, B.D.Singh, Kapil Muni

Dubey, M.O.Tipathi, P.P.S.Chauhan, R.A.Mishra, R.S.Pandey, S.C.

Mishra

along with

Case :- FIRST APPEAL FROM ORDER No. - 283 of 1998

Appellant :- The National Insurance Co.Ltd..

Respondent :- Sripat Yadav And Others

Counsel for Appellant :- R.C.Sharma

Counsel for Respondent :- R.A.Misra, A.Mohan, Anil Kumar

Srivastava, Manglesh Singh, S.P.Tewari, U.C.Mehta

Hon'ble Jaspreet Singh, J.

1. This is a batch of two appeals filed by the legal heirs of deceased Akhilesh Yadav and Ajit Kumar Singh, who died in an accident on 19.8.1995, which was caused on account of a collision between a jeep bearing no. MGR 867 and a truck bearing No. UPX 6457.

2. The legal heirs of deceased Akhilesh Yadav had filed C.P. No. 153 of 1995, which was allowed and it has given rise to F.A.F.O. No. 283 of 1998 whereas legal heirs of other deceased namely Ajit Kumar Singh had filed C.P. NO. 279 of 1995, which was also allowed and it has given rise to F.A.F.O. No. 279 of 1998. Since the claim petitions arise out of the same accident and similar questions of law and fact are involved, accordingly both the appeals have been connected and were heard together.

3. Both the appeals have been preferred by the National Insurance Company Limited, who is the insurer of the Jeep bearing No. MGR 0867 and two deceased namely, Akhilesh Yadav and Ajit Kumar Singh were the occupants of the said jeep. In order to appreciate the controversy involved in the present two appeals certain brief facts are being noticed hereinafter, which will be beneficial for adjudicating the issue raised by the counsel for the appellant.

4. The record indicates that on 19.8.1995 both Akhilesh Yadav and Ajit Kumar Singh were travelling in a jeep bearing No. MGR 0867. While the said jeep had reached near Katehari Bazar a truck bearing no. UPX 6457, which was being driven rashly and negligently came on the wrong side of the road and consequently hit the jeep from the front as a result both Akhilesh Yadav and Ajit Kumar Singh sustained injuries. They were taken to the District Hospital where they were pronounced dead. It is in the aforesaid context that the heirs of Akhilesh Yadav preferred C.P. No. 153 of 1995 whereas the legal heirs of Ajit Kumar Singh filed C.P. No. 126 of 1995.

5. Both the claim petitions came to be contested and though the owner and driver of the jeep had filed his written statement so also the owner and driver of the truck had also filed a separate written statement whereas the National Insurance Company Limited being the insurer of jeep filed its separate written statement and insurer of the truck namely United India Insurance Company Limited filed its separate written statement. The defence as taken by the owner/driver of the two offending vehicles stated that it was on account of the negligence of the Jeep driver that the accident occurred whereas the contention of the owner and driver of the jeep was that it was the truck who was rash and negligent. Thus it would be seen that both the offending vehicles tried to put the blame on the other. Both the

insurance companies who had insured the truck as well as jeep respectively took the general defence that unless and until the vehicle is found to be plying as per the policy conditions and the driver concerned had valid and subsisting licence and other documents till then the insurance company could not be made liable.

6. Upon exchange of pleadings, the tribunal framed five issues. It will also be relevant to notice that it is only the claimants who entered into the witness box to depose and substantiate their respective claims. However, no witness was examined on behalf of either the Jeep owner or the truck owner or driver. No witness was also produced on behalf of the insurance companies.

7. In the aforesaid backdrop, the tribunal after considering the evidence led on behalf of the claimants including the testimony of PW-2 Khursheed Ahmad found that it was on account of rash and negligent driving of the truck driver UPX 6457, which was primarily responsible for the accident as it had hit the jeep in question coming on wrong side of the road. The evidence of PW-2, who narrated the incident also stated that the jeep was on its left side and truck being a heavier vehicle ought to have been driven more cautiously but the fact remains it came on the wrong side and hit the jeep, which was the cause of the accident.

8. The tribunal also noticed that though primarily, negligence was that of the truck driver but it noticed that the jeep in question bearing No. MGR 867 had more occupants than its sitting capacity, therefore, apparently there was some negligence of the jeep driver too. Accordingly, it found that both the vehicles were responsible for the accident. The tribunal thereafter went on to calculate the compensation and in C.P. No.

153 of 1995 it awarded the total sum of Rs.1,15,000/- along with 12% interest payable from the date of the application till the date of payment. It also found that since the vehicles i.e., truck and jeep were equally responsible hence apportioned 50% of the liability on the insurer of the jeep and remaining 50% on the insurer of the truck.

9. Insofar as the C.P. No. 126 of 1995 filed by heirs of Ajit Kumar Singh is concerned, the tribunal awarded a sum of Rs.3,74,000/- along with 12% interest and in this case too, it apportioned 50% liability on the insurer of the jeep and the remaining 50% on the insurer of the truck. There is a clear finding that the drivers of both the offending vehicles possessed valid and subsisting licence and the insurance policy covered the said vehicles on the date of incident. Consequently, it was the insurance company, which were made liable to indemnify the award. It is this award dated 22.4.1998, which has been assailed by the insurer of the jeep.

10. Shri R.C. Sharma, learned counsel appearing for the National Insurance Company Limited while assailing the award has raised a solitary issue that from the evidence available on record, there was no case made out for any contributory negligence. The jeep was on its correct side whereas it was the offending truck bearing No. UPX 6457, which was being driven rashly and negligently and came over from the wrong side of the road and hit the jeep. It is urged that this fact also stands proved in light of the evidence led by claimants including eyewitness PW-2 Khursheed Ahmad. It is further submitted by Shri Sharma that in order to apportion liability on the jeep it was first necessary to see whether in any manner the jeep driver had contributed to the accident. It has further been pointed out that the reasoning adopted by the tribunal to the extent that since the jeep had more occupants than its sitting capacity, this

in itself cannot be a cause of contributing to the accident unless it is shown and established by any intrinsic evidence that the driver of the jeep was in any manner negligent and had contributed to the accident. The violation of sitting capacity per-se cannot be a ground for treating it as a case of a contributory negligent. In view thereof, it is submitted that the leno with which the tribunal has examined the said issue is wrong and does not stand to reason. Shri Shrama relied upon a decision of Apex Court in the case of ***Mohammed Siddique Vs. National Insurance Company Ltd. (2020) 3 SCC 57.***

11. Shri Kapil Muni Dubey, learned counsel appearing for legal heirs of Ajit Kumar Singh in FAFO No. 279 of 1998 submits that insofar as the aforesaid issue raised by the insurance company is concerned that is primarily an issue between the appellant and other insurance company i.e., United India Insurance Company Ltd and in any manner it does not impact the rights of the claimants to recover the same from the insurance company.

12. Shri Neeraj Awasthi, Advocate holding brief of Shri Anil Kumar Srivastava, learned counsel appearing for United India Insurance Company Ltd. has primarily submitted that since the jeep was being driven with more occupants than its sitting capacity, this in itself is negligence and therefore, in this manner the jeep had also contributed and it cannot be said that the findings recorded by the tribunal are bad and thus the appeal of insurance company deserves to be dismissed.

13. The Court has considered the rival submissions and also perused the material on record, however, before advertng to the aforesaid submissions, it would be necessary to notice that none has put in appearance on behalf of the legal heirs of Shri Akhilesh Yadav, in view thereof the Court has heard the learned

counsel for National Insurance Company Ltd. as well as United India Insurance Company Ltd. in both the appeals and counsel for the claimants in FAFO No. 279 of 1998.

14. Having considered the submissions and from the perusal of material on record, this Court finds that insofar as the testimony of PW-2 Khursheed Ahamd is concerned, he has categorically narrated the manner in which the accident occurred. A specific suggestion was put to him where he clearly stated that it was a highly negligence of a truck driver bearing no. UPX 6457. Another significant feature that stares at the face is the fact that neither the owner/driver of the jeep nor the driver of the truck deposed before the Court to contradict or to give any other version of the accident than what was narrated by the claimant and their witnesses.

15. Apparently this issue is settled that insofar as the factum of the accident, the occurrence is concerned there is no dispute between the parties. The claimant witnesses also pointed out towards the negligence of the truck driver bearing no. UPX 6457. In this regard, it is also to be noticed that neither the claimants of both the appeals nor the owner driver or including the United India Insurance Company Ltd. has filed any appeals against the awards and it is only the National Insurance Company Ltd, which is the insurer of jeep in question, who has raised the issue that the manner in which the accident occurred it was the sole liability and the negligence of the truck driver and none could be attributed to the jeep.

16. The Court has specifically taken note of the issue regarding the negligence of truck and the jeep driver and finds that there is a clear finding regarding the negligence of the truck, however, the tribunal further noticed that since more than six persons were sitting in the jeep in question consequently it

attributed certain negligence of the jeep driver as well. There is nothing on record nor even iota of evidence to indicate that jeep had contributed to the accident in any manner. Merely because more occupants were present in the jeep than its sitting capacity, this in itself is not sufficient per-se to attribute negligence to the jeep driver. The aforesaid proposition has also been noticed by the Apex Court in the case of ***Mohammed Siddique (supra)*** and in a decision rendered by this Court in ***FAFO No. 237 of 2014 (United India Insurance Company Ltd. Vs. Smt. Neetu Soni and others)*** decided on 19.7.2021 where the issue of contributory negligence has been dealt with and it has been held that unless and until the contribution of the vehicle in a particular manner, which is connected with the accident is established, no contributory negligence per-se can be attributed to a vehicle or its driver merely on violation of certain provisions of Motor Vehicles Act. It is in this view of the matter, this Court finds that the submissions made by Shri Sharma has some substance.

17. In view of the aforesaid, this Court has no hesitation to hold that findings written by tribunal apportioning 50% liability on the National Insurance Company solely on the ground that they had more passengers than its sitting capacity and apportioning 50% of the liability on the insurance company of the jeep per-se is not sustainable.

18. In light of the aforesaid discussion, the appeals are partly allowed. The award dated 22.4.1998 passed in C.P. No. 153 of 1995 and 126 of 1995 both shall stand modified to the extent that the entire amount shall be liable to be identified by United India Insurance Company Ltd. Subject to the aforesaid modification, all other findings are affirmed. No other point has been pressed by the parties.

19. It is also informed by learned counsel for appellant that they have already deposited their half share in terms of the award, which has been released in favour of the claimants. This fact is not disputed by the learned counsel for claimants and also not disputed by Shri Awasthi, learned counsel for United India Insurance Company Ltd.

20. In view of the aforesaid, since the award has been modified, it shall be open for the appellant to recover the half amount paid by them from the United India Insurance Company Ltd.

21. With the aforesaid, the appeals are allowed in part. There shall be no order as to cost.

22. The record of the tribunal shall be returned forthwith.

Order Date :- 13.10.2023

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