

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 6 of 2003

Appellant :- Branch Manager United India Insurance Co. Ltd. Thru Manager

Respondent :- Smt. Matna Devi And 5 Ors.

Counsel for Appellant :- Anand Mohan, Anil Kumar Srivastava

Counsel for Respondent :- T.C.Seth

Hon'ble Ajay Bhanot, J.

The appeal arises out of a judgment and order dated 16.10.2002 and award dated 30.10.2002 rendered by the Motor Accident Claims Tribunal/VIth Additional District Judge, Pratapgarh in M.A.C.P. No. 98 of 1997 (Smt. Motna Devi and others Vs Satish Kumar Kohli and others) awarding a sum of Rs. 2,38,000/- alongwith an interest of 9% p.a. The amount was liable to be paid by the appellant insurance company. The insurance company is in appeal.

Sri Anil Kumar Srivastava, learned counsel for the appellant submits that though multiple grounds have been pleaded in the memo of appeal only one ground is being pressed. It is contended that the factum of the accident was disputed and the learned tribunal erred in law and fact by finding that the driver of the tanker was solely guilty of negligence and consequently the appellant is liable for compensation. The learned tribunal failed to consider that it was a case of contributory negligence.

Briefly the case of the claimants before the learned tribunal was that the deceased died in an accident on 16.05.1997 caused by the rash and negligent driving of the driver of Tanker no. P.B.V. 7897. On the fateful day the deceased was travelling in Jeep no. MP-19-A/5046 which collided with the tanker.

One more claim set arose out of the same accident and was instituted as M.A.C.P. No. 57 of 1997 (Smt. Alka Verma Vs Satish Kumar).

The claimants in M.A.C.P. No. 57 of 1997 introduced one Suresh

Chandra Tiwari as PW-2 to establish the factum and cause of the accident. The testimony of the said Suresh Chandra Tiwari who deposed as PW-2 was recorded in the M.A.C.P. No. 57 of 1997. Relying on the aforesaid testimony the learned tribunal in this case found that the said PW-2 was an eye witness to the incident. He had deposed before the learned tribunal that he had witnessed the accident and had specifically testified that the accident occurred due to rash and negligent driving of the tanker no. P.B.V. 7897. The said PW-2 Suresh Chandra Tiwari held his ground under cross examination and his credit could not be impeached during the trial. The learned tribunal in M.A.C.P. No. 57 of 1997, found the witness to be reliable and believed his testimony. The learned tribunal while rejecting the objections to the credibility of the said witness found as under:

"This contention of the learned counsel does not carry force in view of the specific testimony to the very manner of the accident which occurred before this witness because in his cross examination this witness has specifically and categorically testified that he witnessed the accident and at that time he was present on the spot of accident."

Nothing was shown from the record which could discredit the said eye witness or make his testimony unworthy of belief.

The tribunal while making the impugned award also considered the testimony of the driver of the offending tanker Pradumna Prasad in M.A.C.P. No. 57 of 1997. The said Pradumna Prasad while deposing in M.A.C.P. No. 57 of 1997 stated in his examination in chief that the jeep driver was at fault. However, the credit of the said witness was shaken under cross examination and the learned tribunal that the witness was not worthy of reliance by holding as under:

"But this witness was cross examined by claimant wherein he has been queried about the fact whether he got lodged report of the accident with the police or not at which this witness has testified in the negative which itself shows that this witness is not telling the truth."

It is noteworthy that the Pradumna Prasad the driver of the tanker did

not get any FIR lodged after the accident. He simply fled the spot. The conduct and omissions of the tanker driver negates his credibility.

There is another reason for this Court to affirm the findings of the learned tribunal in regard to the testimony of the said witness. The learned tribunal in M.A.C.P. No. 57 of 1997 had the benefit of observing the demeanor of both the witnesses. The tribunal also appraised their conduct and omissions. In such circumstances the appellate court will defer to findings of the learned tribunal. Particularly since no perversity has been pointed out in regard to the said findings from the record.

Lastly, the supporting documents namely the FIR and the chargesheet in respect of the incident clearly implicate the driver of the tanker. These corroborative pieces of evidences too could were not successfully challenged before the tribunal. No worth while contest was raised in respect of the documents before this Court as well.

In this wake this Court finds that this was not a contributory negligence, but on the contrary the accident was caused by rash and negligent driving of the tanker driver. For this the appellant insurance company has lawfully made liable for.

The findings of the learned trial court are lawful and validly arrived at upon a balanced appraisal evidence and other materials in the record. The impugned award do not call for any interference.

The appeal is dismissed.

Order Date :- 10.8.2023
Pravin