

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 188 of 2000

Appellant :- U.P.S.R.T.C.Through R.M.Faizabad

Respondent :- Smt. Prem Pati And Others

Counsel for Appellant :- Anuj Kudesia

Counsel for Respondent :- B.R.Tripathi

Hon'ble Jaspreet Singh,J.

Heard Sri Himanshu Shukla, learned counsel under the authority of Sri Anuj Kudesia, learned counsel for the appellant. None has put in appearance on behalf of the respondents despite the name of Sri B.R. Tripathi, as counsel for the respondents shown in the cause list.

In view of the aforesaid as well as the fact that the appeal is of the year 2000 and is listed under the heading "these cases shall not be adjourned", the Court has proceeded to hear the learned counsel for the appellant in absence of learned counsel for the respondents.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 03.11.1999 passed by the First Additional District Judge acting as M.A.C.T. in Claim Petition No. 35/70/1997 whereby in a death case, the Tribunal has awarded a sum of Rs. 2,15,800/- along with 12% interest per annum by means of the award dated 03.11.1999.

The submission of learned counsel for the appellant is that it was case of contributory negligence which has not been appropriately considered by the Tribunal. In view thereof, the awarded amount needs to be apportioned between the appellant and the heirs of the deceased-victim and the appellant cannot be made to indemnify the entire award.

The Court has considered the aforesaid submissions and also perused the material on record.

Apparently, what transpires is that on 25.02.1997 Sri Sunil Kumar Pandey along with his relative was taking his crop of sugarcane on Tractor-trolley bearing No. URV 6515 to be placed before the Balrampur Sugar Mills. While they were on the Bahraich-Balrampur Marg, near Village Khargaura Ganesh, at around 02:00 AM, the bearing of the trolley had malfunctioned, accordingly, the tractor-trolley was parked at the

side and Sunil Kumar Pandey was sitting at aside. At around 03:00 AM, the bus belonging to the U.P.S.R.T.C. bearing No. UHU 9311 which was being driven rashly and negligently hit the trolley from behind as a result the same crushed Sri Sunil Kumar Pandey who died on the spot.

It is in the aforesaid context that Claim Petition No. 35/70 of 1997 came to be filed which was contested by the respondent. A plea had been taken as to whether the accident occurred on account of rash and negligent driving of the bus driver and whether the claim petition was bad for non-joinder of parties.

The Tribunal considering the manner in which the accident occurred recorded a clear finding that the accident was an outcome of rash and negligent driving of the bus driver. It also found that there was no error of non-joinder of appropriate parties. Thereafter it went on to compute the compensation and awarded a sum of Rs. 2,15,800/- along with interest at the rate of 12% per annum by means of award dated 03.11.1999. It is this award which is under challenge before this Court.

Having considered the submissions made by learned counsel for the appellant and from the perusal of the material on record, this Court finds that prima facie the issue raised by learned counsel for the appellant regarding contributory negligence is bad for the simple reason that no such pleadings were taken in the written statement. This appears to have been developed during the course of arguments.

Apparently, from the perusal of the material, it clearly indicates that in paragraph 25 of the written statement filed by the U.P.S.R.T.C., it clearly indicated that the bus was being driven and since from the opposite direction another truck was approaching which had all its indicators and the bus driver had given a dipper and thereafter it is alleged that the lights of the bus failed. The driver attempted to halt the bus by using the breaks which also did not function, consequently, it hit the tractor-trolley crushed the deceased who was sitting at the side.

Once the aforesaid pleadings are there in the written statement and this does not indicate how the deceased contributed to the accident, thus, there can be no doubt that there is no issue of contributory negligence and it is for the said reason that neither any plea was taken nor any issue was framed.

In so far as the second submission regarding the non-joinder of the Insurance Company of the tractor-trolley is concerned even that has got no impact for the reason that the claim is being preferred against the U.P.S.R.T.C.

Thus, for the aforesaid reasons, this Court finds that there is no merit in the appeal which is accordingly ***dismissed***. The award dated 03.11.1999 passed in Claim Petition No. 35/70/1997 is affirmed. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimants-respondents and the remaining sum with up to date interest shall be paid to the claimants-respondents within a period of 60 days from today from the date, a certified copy of this order is placed before the Authority concerned. The records of the court below shall be returned forthwith.

Order Date :- 23.11.2023

Asheesh