

Neutral Citation No. - 2023:AHC-LKO:53682

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 120 of 2003

Appellant :- Awadhesh Kumar Jaiswal And Another

Respondent :- Addl. District Judge/Motor Accident Claim
Tribunal Unnao

Counsel for Appellant :- B.P.Singh,Sridhar Awasthi,Sudeep
Seth

Counsel for Respondent :- Rajendra Jaiswal,Rajerndra Jaiswal

Hon'ble Ajay Bhanot,J.

1. The appeal arises out of a judgment and decree dated 31.01.2003 rendered by the Motor Accident Claims Tribunal/Vth Additional District Judge, Unnao in M.A.C.P. No. 182 of 2000 (Smt. Sumariti Devi Vs Awadhesh Kumar Jaiswal and others). The learned Tribunal by the impugned award has partly allowed the claim of the appellant and awarded compensation of Rs. 1,67,000/- with an interest of 8% p.a.

2. The tribunal imposes the entire liability upon the respondents on the footing that in the admitted facts of the case the vehicle was not insured.

3. This appeal has been filed by the respondents/owners of the vehicle upon whom liability to pay compensation has been imposed. The tribunal while making award found that the respondents/appellants were the owners of the offending tractor No. U.P. 35/9376. The tractor was not insured. The deceased died in an accident in which the offending vehicle ran over the deceased on 30.05.1995. The tribunal also found that the accident caused solely by the rash and negligent driving of the

driver of the tractor. In light of these findings the compensation was awarded under the following heads:

Sr. No.	Heads	Awarded by the tribunal
1.	Monthly Income (A)	
2.	Annual Income (B)	15,000/-
3.	Deduction towards personal expenses	5000/-
4.	Annual loss of dependancy	10,000/-
5.	Multiplier	16
6.	Total loss of dependancy	1,60,000/-
7.	Conventional Heads	7,000/-
8.	Total compensation	1,67,000/-
9	Interest	8%

4. Sri Sudeep Seth, learned Senior Counsel assisted by Sri Sridhar Awasthi and Sri Anurag Kumar Srivastava, learned counsels for the appellant assailing the award submits that the findings as regards negligence by the driver of the tractor is perverse and cannot be sustained from the evidence in the record. Secondly the award is in the teeth of the law laid down by the Supreme Court in **Deepal Girishbhai Soni and others Vs United India Insurance Co. Ltd. Baroda** reported at **2004(5) SCC 385**.

5. Per contra, Sri Rajendra Jaiswal, learned counsel for the claimant-respondents submits that the findings of the tribunal regarding negligence of the driver of the vehicle are just and valid. Secondly the judgment rendered in **Deepal Girishbhai Soni (supra)** is not applicable to the facts of this case.

6. After some arguments learned counsel for the parties agree that the following questions arises for determination in this appeal:

1. Whether the tribunal erred in law by finding that the tractor driver was solely responsible for the accident and accordingly imposing the entire liability upon the appellants?

2. Whether the award is in the teeth of law laid down by the Supreme Court in **Deepal Girishbhai Soni (supra)**.

7. To establish the factum of the accident the claimants introduced PW-2 Shiv Kumar, as a witness. According to the claimants PW- 2 Shiv Kumar was an eye witness. PW- 2 in his deposition before the tribunal has testified that he was witness to the accident. He deposed that on the fateful day bricks were being loaded on the offending tractor. After the bricks were loaded he sat on the tractor and the driver ran the tractor over the deceased Shiv Nath. Under cross examination the PW-2 Shiv Kumar held his ground. Nothing adverse could be elicited by the claimants in the aforesaid cross examination of Shiv Kumar which could in any manner impeach the credit of the said witness.

8. In this manner this Court finds that PW-2 Shiv Kumar was a witness of utmost credibility who established that the accident which resulted in the death of the deceased was caused solely by the negligent driving of the tractor driver.

9. The learned tribunal which had the benefit of observing the demeanor too found him to be a reliable witness and believed his testimony. This Court does not find any reason to take another view in the matter.

10. Various alleged inconsistencies are alleged in the FIR, Panchayatnama, and the deposition of PW-2 Shiv Kumar. The submissions on the face of it look attractive but fail upon a deeper scrutiny. Firstly, the PW-2 was never challenged on the inconsistencies in the FIR and Panchayatnama during his deposition. It is not open to the appellants to raise this ground at this stage in appeal. Secondly, perusal of the documents do not disclose any inconsistencies which would falsify the claimants' case. FIR is not an encyclopedia which is required to contain all minute details of the incident. Thirdly, the mere fact that PW-2 Shiv Kumar was not a witness to the Panchayatnama or the inquest report does not devalue his credibility as an eye witness. Fourthly, deficiencies in police investigation have no bearing in the instant civil proceedings. It is well settled yet again that criminal proceedings fix the criminal liability for the offence of rash driving. While proceedings under the Motor Vehicles Act, 1988 are taken out for grant of compensation. The standards of evidence in both proceedings are also different.

11. In this wake this Court finds favour for the respondents claimant and against the appellants.

12. The learned tribunal has awarded compensation which is clearly relatable to Section 166 and Section 168 of Motor Vehicles Act, 1988. The judgment of the Supreme Court as rightly contended by Sri Rajendra Jaiswal, learned counsel for the claimant-respondents has no applicability to the facts of this case. The learned tribunal while awarding the just compensation has applied the correct multiplier, examined relevant factors including the income of the deceased and has arrived at a valid lawful conclusion.

13. No perversity in any finding of the learned tribunal has been shown from the record which will warrant interference by this Court.

14. In light of the preceding narrative this Court finds that there is no merit in the appeal. The appeal is liable to be dismissed and is dismissed.

Order Date :- 11.8.2023

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