

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 1062 of 2013

Appellant :- United India Insurance Company Ltd. Thru Its Manager

Respondent :- Rinki Singh And Others

Counsel for Appellant :- Anil Kumar Srivastava

Counsel for Respondent :- Rakesh Kumar Singh, Ajay Kumar Singh

Hon'ble Jaspreet Singh, J.

1. Heard Shri Anil Kumar Srivastava, learned counsel for the appellant and learned counsel for the respondents.
2. The insurance company as appellant has approached this Court assailing the award dated 16.8.2013 passed in a petition under Section 163-A of the Motor Vehicles Act, 1988 wherein in a death case, a sum of Rs. 2,25,500/- has been awarded in favour of the claimants-respondents along with 6% interest.
3. The learned counsel for the appellant, Shri Anil Kumar Srivastava submits that the factum of accident itself is disputed and there is no cogent evidence available on record to substantiate the occurrence. It is submitted that only one witness worth its name was examined on behalf of the claimants which, needless to say, was a hugely interested witness and his testimony should have been considered cautiously. But this has not been appropriately noticed by the Tribunal and ignoring the aforesaid including the testimony of Santosh Singh who was the driver of the offending vehicle, the Tribunal has made the award without considering as to whether the factum of death and the involvement of the offending tractor was proved or not. It is thus stated that the appeal deserves to be allowed and the claim petition be dismissed.
4. The learned counsel appearing for the claimants-respondents has submitted that the claimants' witness namely, Rajwant Singh though the brother of the deceased but as he was present at the site of occurrence of the accident, he was a natural eye-witness and thus it cannot be said that he was a highly interested witness. It is further urged that the accident was clearly depicted in the testimony the claimants' witness and even the driver of the offending tractor in his cross examination admitted the death of Shri Rakesh Singh on account of the use of the motor vehicle i.e the tractor in question and in such

circumstances, it cannot be said that there was no material evidence on record. The tribunal has clearly noticed the testimony of the claimants' witnesses as well as the only witness, Santosh Singh who had appeared on behalf of the defendants, and thereafter, the Tribunal has awarded the sum which does not require any interference and the appeal deserves to be dismissed.

5. Before advertng to the respective submissions, it would be appropriate to notice the facts of instant appeal first. As per the claimants, it was stated that on 03.12.2012 around 8.00 am in the morning, Rakesh Singh along with his brother Rajwant Singh went getting their farming fields ploughed with a tractor bearing No. UP-36-4465 which belonged to Vansh Bahadur Singh, the respondent no. 6 and it was being driven by Santosh Singh, the respondent No. 5. It is stated that during ploughing of the fields, Rakesh Singh was standing at a side on the boundary of the said field. On account of inadvertence, the tractor came too close to Rakesh Singh and he slipped and while he was trying to catch hold on to the tractor to get on top, he slipped again and got caught in the rotator, as a result, Rakesh Singh sustained grievous injuries and expired on the spot.

6. It is on account of the aforesaid incident that the claim petition bearing No. 99/2013 came to be filed before the M.A.C.T./A.D.J., court no. 4, Raebareli.

7. The claim petition came to be contested by the owner and the driver of the tractor and denied the contents of the claim petition. It squarely denied that any such accident had occurred and it was stated that on account of certain rivalry between Rakesh Singh and the respondents relating to elections, the respondent Nos. 5 and 6 have been falsely implicated. Apart from the aforesaid plea, it was also pleaded that the tractor possessed all relevant documents and it was duly insured and that the driver Santosh Singh has a valid and a subsisting driving licence.

8. Upon the exchange of pleadings, the Tribunal framed four issues and thereafter noticed that on behalf of the claimants Rinki Singh, the widow of the deceased and Rajwant Singh, the brother of the deceased were examined as witnesses. While filing documentary evidence documents relating to the insurance, registration and licence relating to the tractor in question were filed. The driver was the sole witness who was examined as D.W.-1. Taking note of the evidence available on record, the trial court while dealing with issue no. 1 clearly recorded a finding that in the cross examination, Santosh Singh

gave a clear statement that Rakesh Singh died solely on account of the use of the tractor in the manner it was indicated. No other witness was examined on behalf of the respondents to contradict the testimony of the claimants and it was held that even though the tractor driver was not negligent, but on account of the untoward incident which is related to the use of the motor vehicle, Rakesh Singh had expired.

9. The Tribunal further noticed that the driver had a valid licence and the truck was insured and thereafter it found that since the deceased was the earning member and a petition had been preferred under Section 163-A of the Motor Vehicles Act, 1988, accordingly, it awarded a compensation of Rs. 2,25,500/- along with 6% interest in favour of the claimants-respondents by means of award dated 16.8.2013. It is this award which is under challenge before this Court.

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

11. At the outset, it may be noticed that this appeal has been preferred assailing an award passed in a petition under Section 163-A of the Motor Vehicles Act, 1988. The aforesaid section is in context with liability that may arise on account of use of a motor vehicle. There is no legal requirement to establish the negligence of the driver of the offending vehicle. In the aforesaid backdrop, if the submission of the learned counsel for the appellant is noticed, the Court has no hesitation to state that the same is misconceived for the reason that though a defence was taken by the owner and the driver of the tractor that the tractor was not involved. However, from the perusal of the cross examination of the sole witness examined on behalf of the defendants namely, Santosh Singh, it would be found that he clearly admitted that the death of Rakesh Singh was on account of use of the tractor. Neither the owner entered into the witness box to contradict nor he gave any evidence that in case if his tractor was not involved, then where was his tractor on the given date and time of the accident.

12. There is a difference in the pleadings and the proof available on record and from the testimony of the defendants' witness itself, it corroborates the statement given by the claimants' witness namely, Rajwant Singh who was not only the brother of the deceased but was also present at the site. Merely because he was the brother of the deceased does not render his testimony bad or to suggest that it was highly interested. It could not be disputed that the two brothers had gone to get their farming fields ploughed which was being done with the offending tractor and was being driven by Santosh Singh. The

manner in which the accident has been explained and admitted to Santosh Singh, it leaves no manner of doubt that the accident did occur which involved the tractor in question and in light of the evidence available on record, it cannot be said that the Tribunal has committed any error in relying upon the testimony of the claimants' witness, Rajwant Singh and if the statement of Santosh Singh is read along with, it would be found that insofar as the foundational fact regarding the occurrence of the accident and the death of Rakesh Singh is concerned, there is hardly any dispute.

13. In view of the aforesaid, this Court finds that the submission of the learned counsel for the appellant is absolutely misconceived and the award dated 16.08.2013 passed in Claim Petition No. 99/2013 does not suffer from any error which may persuade this Court to intervene in the appeal.

14. For the aforesaid reasons, the appeal is devoid of merits and is, accordingly, **dismissed**.

15. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimants and any shortfall will also be made good along with up-to-date interest within 60 days from today and be paid to the claimants-respondents.

16. In the facts and circumstances, there shall be no order as to costs. The record of the Tribunal be returned forthwith.

Order Date :- 10.10.2023

Shravan