

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 806 of 2012

Appellant :- Chhetriya Prabandhak U.P.S.R.T.C.
Lucknow Thr.R.M.

Respondent :- Smt.Anju Singh And Others

Counsel for Appellant :- Akhter Abbas

Counsel for Respondent :- Rama Shanker Singh,Ambika Prasad,Nirmit Srivastava,Srajak Srivastava

Hon'ble Jaspreet Singh,J.

Heard Shri Ambika Prasad, learned counsel for the appellant and Shri Rama Shanker Singh, learned counsel appearing for the claimants-respondents.

Under challenge is the award dated 14.05.2012 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.12, Lucknow in Claim Petition No.241 of 2010 whereby the Tribunal has awarded a sum of Rs.33,77,372/- alongwith 6% interest per annum in favour of the claimant-respondents.

Learned counsel for the appellant while assailing the award has submitted that the accident occurred on account of fault of the deceased-respondent as he had contributed to the accident and as such there was no fault of the driver of the bus. However, he has been wrongly implicated and the Tribunal erred in fixing the liability of negligence on the bus driver which is not borne out from the record.

It is further submitted that the deceased was riding his motorcycle and had dashed against rickshaw and he fell whereas he was crushed by the left rear wheel of the bus and this indicates that the accident was not on account of rash and negligent driving of the bus driver rather the motorcyclist himself was purely responsible for the accident.

Another submission raised by the learned counsel for the appellant is that the Tribunal has not adopted the correct multiplier; inasmuch as the deceased was held to be 38 years upon which the multiplier of 15 ought to have been taken whereas the Tribunal has erred in taking a multiplier of 16 which has affected the quantum of award, hence the appeal deserves to be allowed.

Shri Rama Shankar Singh, learned counsel appearing for the claimant-respondents, on the other hand, submits that after the exchange of pleading and the evidence led by the parties, it was categorically established that the negligence was of the bus driver who had crushed the motorcyclist by hitting him from the back. It is also urged that it is incorrect to state that the bus driver was not negligent whereas in pursuance of the First Information Report lodged relating to the said accident, the bus driver was chargesheeted, accordingly it is not open for the appellant to state that the bus driver was not guilty.

It is further submitted that in so far as the adoption of the multiplier is concerned, the same may be a little deviated from the table of multiplier which has been approved by the Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121**. The fact remains that the Tribunal has not granted the non-pecuniary benefits in the appropriate manner and merely a sum of Rs.2000/- has been awarded towards funeral expenses, Rs.2500/- towards loss of estate and Rs.5000/- towards loss of consortium. It is, thus, urged that in case if appropriate amount is taken on account of the non-pecuniary benefits and also noticing the future prospect which has not been granted in the aforesaid circumstances, the award would be much higher but nevertheless where the awarded sum is just and appropriate, then this Court shall not intervene on account of the multiplier as there is some insignificant variation in the amount so awarded, thus, the appeal deserves to be dismissed.

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

The record indicates that on 21.03.2010 Gyanendra Singh was riding his scooter bearing number UP 44/NO-0510. However, when he reached Sultanpur Kotwali, at that time a bus bearing number UP 42 T-4853 which was coming from the Sultanpur depot side, hit the scooter of Gyanendra Singh from the back, as a result Gyanendra Singh fell and he was crushed under the wheel of the bus and he had died on the spot. It is in the aforesaid context that the legal heirs of the deceased Gyanendra Singh, namely, his wife, two minor children and his parents jointly filed Claim Petition No.241 of 2010 claiming compensation. It was stated that Gyanendra Singh was working as a Senior Executive from 2006 in Sahara India Para Banking Division in Sultanpur and was drawing a salary of Rs.27,115/- per month.

UPSRTC-appellant filed his written statement controverting the accident and stated that actually the accident occurred on account of the fact that the scooter driver that is Gyanendra Singh was negligent and had hit a Rickshaw and because of that impact, he fell while the bus of the UPSRTC which was moving crushed Gyanendra Singh who came under the wheel though there was no negligence of the bus driver as the bus itself had not hit deceased Gyanendra Singh.

Upon exchange of the pleading, the Tribunal framed four issues considering the issue no.2 which was framed as to whether Gyanendra Singh died on account of own negligence or whether it was the negligence of the bus driver, the same was considered by the Tribunal who recorded a finding that the accident was on account of rash and negligence driving of the bus driver. The Tribunal thereafter went on to compute the compensation and awarded a sum of Rs.33,77,372/- alongwith 6% interest by means of its award dated 14.05.2012 which is under challenge in the instant appeal.

Having heard the learned counsel for the parties and from the perusal of the material on record, it revealed that Praveen Kumar Pandey who was examined as P.W.2 was also an eye-witness and he

had clearly depicted and narrated as to how the accident took place. It is stated by him that he was also going to his office and was behind Gyanendra Singh. He positively stated that at around 10.00 A.M. bus bearing number UP 42 T-4853 was being driven rashly and negligently and it hit the scooterist from the back on account of the said accident Gyanendra Singh came under the wheel of the bus and he died on the spot. He further categorically stated that Gyanendra Singh was not responsible for the accident nor he was negligent. On the other hand, the bus driver Dinesh Kumar Pandey was examined. In his deposition, he stated that while he was waiting for passenger to alight from the bus, the police came and apprehended the driver and during cross-examination, he further admitted that he had reached the bus stand at around 10.00 A.M.

The other witness, namely, Om Prakash who was the conductor of the bus merely stated that no accident took place. However, in his cross-examination, he admitted the fact that the bus was reached the bus depot around 9.45 A.M. and at that point of time, there was quite a traffic and the police had arrived. He even made inquiry and even the passengers stated that from the bus in question some accident had taken place. He also stated that he had not asked the bus driver regarding the accident and why the police had apprehended him.

From the perusal of the aforesaid statement of the eye-witness P.W.2 Praveen Kumar Pandey and the sketchy evidence of the bus driver Dinesh Kumar and the conductor Om Prakash, no positive evidence could be led which could cast a doubt over the testimony of P.W.2 the eye-witness. Moreover, the driver did not deny the fact that a First Information Report was lodged which was done by Praveen Kumar Pandey who was the eye-witness. Shri Dinesh Kumar, the driver was also chargesheeted and there was nothing on record which could cast a doubt over the testimony of the eye-witness. This Court finds that the Tribunal has rightly drawn the inference from the material available on record and held that it was the negligence of the bus driver which caused the

accident and led to the death of Gyanendra Singh. Thus, the submission made by the learned counsel for the appellant that the deceased himself had contributed to the accident is not made out and as such the submission is turned down while affirming the finding of the Tribunal.

In so far as the quantum is concerned, though the counsel for the appellant states that the Tribunal ought to have taken a multiplier of 15 as the age of the deceased was 38 years. However, what this Court finds is that the Tribunal while calculating the compensation has taken the multiplier to be of 16 but it has not taken note of the future prospect nor it has appropriately awarded the amount under the conventional head. Thus, in case if the multiplier of 15 is adopted and appropriate amount is granted towards the conventional heads even then the amount as awarded would be less. However, since there has been no cross appeal and this Court is only required to look into the quantum, hence noting that mere discrepancy in adopting a difference of one multiplier is not going to materially impact the awarded sum, hence in the aforesaid circumstances where the claimants could have been granted a higher amount but only Rs.33,77,372/- has been awarded by the Tribunal alongwith 6% interest. Hence, this Court does not deem appropriate to interfere with the award, accordingly the award dated 14.05.2012 passed in Claim Petition No.241 of 2010 is affirmed as it is just and fair.

Any amount deposited by the appellant before this Court shall be remitted to the Tribunal to be released in favour of the claimant-respondents and any other amount which is left, the same shall also be paid with up-to-date interest to the claimant-respondents in accordance with the award.

Subject to the aforesaid, the appeal is devoid of merit and is dismissed. In the facts and circumstances, there shall be no order as to costs. The record of the Tribunal be returned to the concerned Tribunal forthwith.

Order Date :- 18.11.2023

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