

Neutral Citation No. - 2023:AHC-LKO:74401**Court No. - 19**

Case :- FIRST APPEAL FROM ORDER No. - 18 of 2016

Appellant :- Ram Bahadur Yadav And Another

Respondent :- Ram Kesh And Ors.

Counsel for Appellant :- Ram Kedar Dubey

Counsel for Respondent :- Ramakar Shukla,Zafar Aziz

Along with

Case :- FIRST APPEAL FROM ORDER No. - 840 of 2016

Appellant :- The New India Assurance Co.Ltd. Thru. Officer Incharge

Respondent :- Satyendra Sharma And 6 Others

Counsel for Appellant :- Zafar Aziz

Counsel for Respondent :- Sunil Kumar Singh,Amit Sharma,Mohan Chandra Dikshit,Radhey Govind Dubey,Ram Kedar Dubey

Hon'ble Jaspreet Singh,J.

1. This is a batch of two appeals preferred by the appellant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 08.10.2015 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.13, Sultanpur in Claim Petition No. 194 of 2014 wherein in a death case a sum of Rs. 1,24,500 has been awarded along with 8% interest in favour of the claimants and while making the said award, the Tribunal has fastened the liability on the defendant nos. 1 and 2 of the claim petition who were the owner and driver respectively and 80% of the award has been fastened on them jointly and severally and for some reason 20% has not been allowed holding that the claimant had also contributed to the said accident.

2. It is in view of the aforesaid that the claimants have filed F.A.F.O. No. 18 of 2016 assailing the award to the aforesaid extent as in the said accident another person Sri Jai Narayan had also expired, his legal heirs

have filed Claim Petition No. 273 of 2014 which came to be decided on 30.05.2016 and it has been held that the vehicle was being driven by Sri Suresh who had a valid driving license and the liability has been fixed on the Insurance Company whereas in the same accident where Bam Bahadur had expired, the Tribunal found that the vehicle in question was being driven by Deepak, hence, in C.P. No. 273 of 2014 no liability could have been fastened on the Insurance Company and thus being aggrieved the award dated 30.05.2016 in C.P. No. 273 of 2014, the Insurance Company has filed F.A.F.O. No. 840 of 2016 while the Insurance Company has filed F.A.F.O. No. 840 of 2016 assailing the said award on the ground that earlier the driver of the offending vehicle as noticed in the First Information Report was Deepak Yadav lodged but later when the charge sheet was filed, Sri Suresh Kumar was indicated as the chargesheeted driver and it is the contention of the Insurance Company that actually Deepak Yadav was the actual driver but since he did not have a valid and subsisting driving license, the name of Sri Suresh Kumar was inserted in order to fasten the liability on the Insurance Company.

3. The Court has heard Sri Kedar Dubey, learned counsel for the appellant in F.A.F.O. No. 18 of 2016 and Sri Zafar Aziz, learned counsel appearing for the Insurance Company and Sri Ramakar Shukla, learned counsel for the claimants-respondents.

4. In order to appreciate the controversy involved in the instant two appeals, briefly, the facts are being noticed by this Court first:-

5. The claim petition no. 194 of 2014 came to be filed by Ram Kesh, Rakesh and Ram Kumar and Raj Kumar all sons of Bam Bahadur against

Ram Bahadur Yadav, owner of the offending vehicle, Deepak, driver of the vehicle. The New India Insurance Company and Suresh Kumar who is said to be a charge sheeted driver.

6. It was stated that Bam Bahadur Sharma had gone to the house of his son's in-laws on 18.05.2014. Ram Kesh, the claimant no. 1 was taking his father on a bycle to the market in Shukul Bazar. On the way to the market, the father of Ram Kesh met an acquaintance and he stopped to exchange greetings and while they were talking on the side, it is alleged that a Car bearing No. UP 32 CU 4941 was being driven rashly and negligently by Sri Deepak and he could not control the car, as a result, he hit Bam Bahadur who died on the spot. Another person on the sidewalk namely Jai Narayan also became a victim of the uncontrolled car and he was also grievously injured.

7. The claimants filed the said petition claiming compensation on account of death of their father Sri Bam Bahadur and this claim petition was registered as Claim Petition No. 194 of 2014.

8. The claim petition came to be contested by the owner driver by filing a separate written statement. The Insurance Company also filed a separate written statement while Sri Suresh who was impleaded as defendant no. 4 and son of Ram Bahadur, the owner of the vehicle filed his separate written statement.

9. Primarily, the written statement filed by Ram Bahadur and his son Deepak stated that Ram Bahadur was the registered owner of the private offending vehicle, however, it was stated that the said car on the given date

was being driven by Sri Suresh and not by Deepak, however, apart from this, it was stated that the driver namely Suresh had a valid driving license but primarily the accident from the said vehicle was denied.

10. Sri Suresh who had filed his separate written statement admitted that he was driving the offending vehicle bearing No. UP 32 CU 4941, however, he also denied that any accident took place on the given date with the vehicle in question.

11. Similarly, the Insurance Company filed a written statement and took the general defence that unless and until it was proved that the vehicle was duly insured and was being driven by a duly licensed driver and there is no violation of the policy conditions till then the Insurance Company cannot be made liable for the award.

12. From the exchange of pleadings, the Tribunal had framed six issues. The claimants in support of their claim had examined P.W. 1 Ram Kesh who was also an eye-witness. P.W. 2 Awadhesh Kumar and P.W. 3 Sri Rakesh Verma. On behalf of the defendants, only Suresh Kumar examined himself as D.W. 1 and the parties have also filed their documentary evidence as well.

13. The Tribunal after considering the oral as well as the documentary evidence concluded that the accident was primarily caused on account of rash and negligent driving of the vehicle bearing No. UP 32 CU 4941 which caused the death of Sri Bam Bahadur.

14. The Tribunal also recorded that the manner in which the accident was depicted including considering the testimony of P.W. 2 that Sri Bam

Bahadur was on the road when the accident took place which indicated that Bam Bahadur was also responsible for the accident and in order to arrive at the said finding, the Tribunal also took note of the site plan prepared by the Investigating Officer.

15. It is taking into consideration that the Tribunal found that since the deceased and his son had stopped at the National Highway where there is a constant movement of traffic, he ought to have been more careful and he should have got off the road and could have talked with his acquaintance on the Kaccha which was not done, thus, Bam Bahadur also contributed to the accident and the Tribunal apportioned 20 % negligence on the deceased and 80% on the offending vehicle.

16. The Tribunal further noticed that the vehicle in question had a valid registration certificate and also had a valid policy which was in effect from 22.06.2013 till 21.06.2014 and since the accident occurred on 16.05.2014, hence, the vehicle was clearly insured.

17. The Tribunal also noticed that since in the First Information Report lodged, Deepak, was shown as the driver and there was nothing on record to suggest that during investigation what was the material available with the Investigation Officer that he had included the name of Sri Suresh, hence, the finding was that Deepak was driving the vehicle and that he did not have the license, accordingly, it went on to compute the compensation and awarded a sum of Rs, 1,24,500/- out of which 20% was deducted towards contributed negligence and 80% of the award was apportioned on the owner and driver i.e Ram Bahadur and his son Deepak liable to pay both jointly and severally.

18. This award dated 08.10.2015 has been challenged by the owner and driver Deepak on the ground that during investigation, it was clearly mentioned that the vehicle was being driven by Sri Suresh who had a valid driving license and this aspect has not been appropriately considered by the Tribunal.

19. On the other hand, in respect of the same accident where Sri Jai Narayan also sustained grievous injuries and he died on 19.05.2014 and in the said trial, the Court concerned found that the offending vehicle was being driven by Sri Suresh who had a valid driving license has awarded a sum of Rs. 2,02,000/- along with 7 % interest on the Insurance Company and being aggrieved, the Insurance Company has filed F.A.F.O. No. 840 of 2016.

20. The learned counsel for the appellant in F.A.F.O. No. 18 of 2016 have raised a limited submission that even though in the First Information Report it has been stated that Sri Deepak was driving the vehicle, however, upon investigation, it was found that Sri Suresh was driving the vehicle who had a valid and a subsisting license. This finding was based on the material on record and the Tribunal has erred in ignoring the same.

21. It is also stated by the learned counsel for the owner and driver that Suresh was examined as a witness and he clearly deposed before the Court that he was driving the vehicle on the given date but had primarily denied the occurrence of the accident.

22. It is thus stated that even though the accident was disputed but it was a factum and material on record including the statement of Suresh

admitting that he was driving the vehicle. It is in continuation thereof that during investigation the police charge sheeted Suresh as a driver and this aspect ought to have been considered which has not been done resulting in sheer miscarriage of justice, inasmuch as, Suresh was the chargesheeted driver, he gave his statement before the Court admitting that he was driving the vehicle and once it was held by the Tribunal that the accident occurred on account of rash and negligent driving of the offending vehicle and under the circumstances, Suresh having a valid license and liability arising out of the same ought to have been fastened on the Insurance Company and thus the award requires modification to the aforesaid effect.

23. The learned counsel for the claimant on the other hand submits that primarily it is a dispute between the owner and the insurer while the claimants are suffering as they have not received the entire awarded sum.

24. In so far as F.A.F.O. No. 840 of 2016 which arises from Claim Petition No. 273 of 2014, it was stated that on 18.05.2014 Sri Jai Narayan had gone to the market to purchase diesel for his pumping set used for agricultural purpose and while he had reached Shukl Bazar, he met his acquaintance Sri Bam Bahadur and while they were talking the offending UP 32 CU 4941 which was being driven rashly and negligently hit both Bam Bahadur who died on the spot and Sri Jai Narayan who received grievous injuries and later during his treatment at Trauma Center, Lucknow, he died on 19.05.2014.

25. This claim petition was decided by Motor Accident Claims Tribunal/Additional District Judge, Court No. 1 Sultanpur wherein a sum of Rs. 2,02,000/- along with 7% interest has been awarded in favour of

claimants.

26. In this case, the Insurance Company has raised the issue that once in Claim Petition No. 194 of 2014 (Ramkesh and Another Vs. Ram Bahadur and Others), it was held that Deepak was driving the vehicle. It was not open for the other Tribunal while trying the case of death of Jai Narayan to hold that the vehicle was being driven by Sri Suresh.

27. It is in the aforesaid backdrop, the only issue which needs to be considered by this Court is as to whether Sri Suresh or Deepak was the driver of the offending vehicle on fateful date i.e. 18.05.2014 and what would be its effect in apportioning the liability on which of the parties.

28. Having considered the submissions of the respective counsel for the parties and from the perusal of the material on record, this Court is first dealing with F.A.F.O. No. 18 of 2016.

29. The record indicates that the case setup by the claimants were that Bam Bahadur was going to the market along with his son Ramkesh while he had met his acquaintance Jai Narayan and they had stopped at the side of the road and they were talking while the offending vehicle came and hit both which resulted in immediate death of Bam Bahadur while Jai Narayan was grievously injured who expired during his treatment on 19.05.2014.

30. Though, the First Information Report which was lodged named Sri Deepak son of Ram Bahadur (owner of the offending vehicle) has driving the vehicle but after investigation, the Investigating Officer found that the vehicle was being driven by Sri Suresh (the other son of Ram Bahadur) who had a valid license and he was chargesheeted and is facing trial.

31. The Tribunal, though, noticed this fact but did not accept this version on the ground that no material has been placed before the Tribunal to show as to how the Investigating Officer came to conclusion that the vehicle was being driven by Sri Suresh whereas in the First Information Report, it was noticed that the vehicle was being driven by Deepak.

32. It may be true that there was not much material nor the proceedings of the investigation which was placed on record but the undisputed fact is that Sri Suresh who was impleaded as defendant in the Claim Petition No. 194 of 2014 appeared in the witness box, gave his statement and admitted that he was driving the vehicle on the given date. Though, he denied that he had caused any accident but nevertheless, there was ample material to indicate that the accident was caused on account of rash and negligent driving of the offending vehicle bearing No. UP 32 CU 4941. The identity of the vehicle is not disputed. The investigation and the evidence on record indicated that the accident also occurred wherein Bam Bahadur expired.

33. Even if at all in the First Information Report, name of Deepak was introduced but now it is well settled to be disputed that the First Information Report is not an encyclopedia or each and every averment made in the First Information Report is to be taken as a gospel truth.

34. The First Information Report is primarily a report which is given to the police to set the criminal justice system into motion. It is the duty of the Investigating Officer to investigate the incident and once he had filed a charge sheet against Sri Suresh who was facing trial, this was enough material for the Tribunal, coupled with the statement given by Sri Suresh before the Tribunal that he was driving the vehicle and in such

circumstances, this Court finds that the Tribunal has erred in ignoring this material and taking a hypertechnical view that there is no material placed on record to substantiate that what investigation was done by the Investigating Officer which prompted him to charge sheet Suresh.

35. This Court hastens to add that the Claims Tribunal is to decide the case in a summary manner, looking into the evidence and pre-ponderance of probabilities. Once, there was a clear admission and statement of Suresh and there was nothing contrary to the said evidence, coupled with the fact that Suresh was the one who has been chargesheeted, this was enough for the Tribunal to have recorded a finding but erroneously it has held that it was Deepak who was driving the vehicle.

36. This Court is not satisfied the manner in which the aforesaid finding has been recorded, consequently, the said finding is set aside and it is held that Suresh was driving the offending vehicle and in this view of the matter since the vehicle was insured and Suresh was also having a valid and a subsisting license, in such circumstances, the liability of the award dated 08.10.2020 shall be squarely met by the Insurance Company.

37. It is also to be seen that the manner in which the accident had occurred specifically noticing the evidence of Ram Kesh and the P.W. 2 that Bam Bahadur while going to Shukl Bazar had met his acquaintance Jai Narayan and they were at the side of the road were talking while the offending vehicle which was out of control hit the two by-standers cannot be said that they have contributed to the accident in any manner and the findings returned by the Tribunal appears to be on assumption and even it is now well settled that the findings of contributory negligence cannot be

solely deciphered from the site plan.

38. this Court finds that the finding recorded by the tribunal apportioning 20% liability on car owner is absolutely erroneous and this Court is fortified in this view in light of the decision of the Apex Court in the case of *Jiju Kuruvila & Ors vs Kunjamma Mohan & Ors; (2013) 9 SCC 166* as well as in *Mohammad Siddique and Another Vs. National Insurance Company Ltd. and Others; 2020 (3) SCC 57*.

39. In this regard, this Court thus finds that the findings returned by the Tribunal apportioning 20% liability on the deceased is also erroneous.

40. For the aforesaid reasons, this Court is of the view that the award dated 08.10.2015 deserves to be modified to the extent that the complete awarded sum of Rs. 1,24,500/- along with 6% interest as awarded by the Tribunal shall be payable to the claimants and it shall be paid by the New India Insurance Company. The award dated 08.10.2015 passed in Claim Petition No. 194 of 2015 shall stand modified to the aforesaid extent, accordingly, F.A.F.O. No. 18 of 2016 is allowed.

41. In so far as F.A.F.O. No. 840 of 2016 is concerned, the only ground of the Insurance Company is that in one claim petition, in relating to the same accident, it was held that the offending vehicle was being driven by Sri Deepak while in the other claim petition which has given rise to F.A.F.O. No. 840 of 2016 it was held that the accident was caused by the offending vehicle driven by Sri Suresh.

42. For the foregoing reasons, the findings recorded in the claim petition of Ram Kesh has been modified by this Court and even otherwise for the

reasons stated hereinabove, there was ample material, statement of Suresh and the fact that he was chargesheeted and that he had a valid license is enough to sustain the findings that the accident caused by the offending vehicle was being driven by Sri Suresh and this finding has been affirmed in F.A.F.O. No. 18 of 2016, thus, the sole ground upon which the F.A.F.O. No. 840 of 2016 has been filed is no more sustainable, accordingly, the F.A.F.O. No. 840 of 2016 is accordingly dismissed and the award dated 30.05.2016 passed in Claim Petition No. 773 of 2014 is affirmed.

Conclusion

43. In light of the aforesaid discussions, F.A.F.O.No. 18 of 2016 is ***allowed***. Any amount deposited by the appellants shall be released in favour of the appellants and any outstanding sum in terms of the award payable to the claimants shall be identified and paid by the Insurance Company with up to date interest within 60 days from the date, a certified copy of this order is placed before the Authority concerned.

44. The F.A.F.O. No. 840 of 2016 is ***dismissed***. Any amount deposited by the Insurance Company before this Court shall be remitted to the Tribunal below to be released in favour of the claimants of Claim Petition No. 273 of 2014 and any outstanding sum in terms of the award impugned with up to date interest shall also be paid by the Insurance Company to the claimants within 60 days, a copy of this order is placed before the Authority concerned. In the facts and circumstances, there shall be no order as to costs. The records of the Tribunal shall be returned forthwith.

45. In the facts and circumstances, there shall be no order as to costs. The

records of the Trial Court be returned forthwith.

(Jaspreet Singh, J.)

Order Date :- 31st October, 2023

Asheesh