

Court No. - 23

Case :- FIRST APPEAL FROM ORDER No. - 310 of 2022

Appellant :- Usha Pandey And Another

Respondent :- Jasveer Kaur Kohli And Others

Counsel for Appellant :- Sunil Kumar Tripathi, Ankit Srivastava

Counsel for Respondent :- Taranjeet Singh Makker

Hon'ble Ajay Bhanot, J.

Heard Shri Ankit Srivastava and Shri Sunil Kumar Tripathi, learned counsels for appellants and Shri Taranjeet Singh Makker, learned counsel for Insurance Company.

This FAFO arises out of a judgment and award dated 06.06.2022 passed by the learned Motor Accident Claims Tribunal (South) Lucknow in MACP No.21 of 2018 {Usha Pandey and another Vs. Ravindra Singh Kohli(deceased) and Ors.}

The learned Tribunal has rejected the claim of the appellants by the impugned order on the sole footing that the sole eye witness P.W.-2 was not worthy of credit.

P.W.-2 in his testimony before the learned Tribunal has shown good cause for his presence at the site of accident. P.W.-2 has testified that he has gone to Delhi to attend to the medical needs of his relative. P.W.-2 also disclosed the manner of the accident and asserted that the same was caused by the negligent driving of the driver of the offending vehicle.

The material facts in the testimony of P.W.-2 remained unshaken under cross examination.

The learned tribunal erred in law by discarding the testimony of the witness on the footing that he could not recall the make of the car and its colour when exposed to cross examination. In the facts of this case, these details were irrelevant particularly when in substance the testimony remained unimpeached. The Court cannot be unmindful of the fact that every person does not have a photographic memory and may not be able to bring out every minutiae like a camera reel. In these facts, failure to recall trivial facts are not sufficient to discard the witness.

Learned tribunal erred in law by discarding the testimony of the eye witness by finding that the eye witness ought to have informed the police and should have taken the injured to the hospital.

The learned trial court misdirected itself in facts and law on this issue as well. Witnesses react in different ways to different situations. Stereotyping witness behaviour may lead to errors in appraisal of witness as has happened in this case.

In wake of preceding discussion, this Court finds that P.W.-2 was a credible witness in so far as, he established the fact of the accident and the negligence of the offending vehicle as the cause for the accident and the death of the deceased resulting from the same.

The judgment and award dated 06.06.2022 passed by the learned Motor Accident Claims Tribunal (South) Lucknow in MACP No.21 of 2018 {Usha Pandey and another Vs. Ravindra Singh Kohli(deceased) and Ors.} is unsustainable in law.

The judgment and award dated 06.06.2022 passed by the learned Motor Accident Claims Tribunal (South) Lucknow in MACP No.21 of 2018 {Usha Pandey and another Vs. Ravindra Singh Kohli(deceased) and Ors.} is liable to be set aside and is set aside.

The matter is remitted to the learned Tribunal for a fresh determination on merits of the case. The exercise shall be completed within a period of three months.

The appeal is allowed to the extent indicated above.

Order Date :- 23.3.2023

Gurpreet Singh