

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 742 of 2017

Appellant :- Gauri And 3 Ors.

Respondent :- Ajay Prakash Yadav And Another

Counsel for Appellant :- Surendra Pratap Singh, Amit Kumar Singh

Counsel for Respondent :- Anchal Mishra

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the appellant and Sri Anchal Mishra, learned counsel for the respondent no. 2.

The instant appeal has been preferred by the claimants assailing the award dated 09.02.2017 passed by the Motor Accident Claims Tribunal/District Judge, Sultanpur in Claim Petition No. 243 of 2014 whereby the claim petition of the appellants has been dismissed.

The record indicates that initially the instant appeal was accompanied by an application seeking condonation of delay upon which the notices were issued and a Division Bench of this Court by means of order dated 04.03.2018 condoned the delay and placed the appeal for hearing.

The office report dated 02.04.2018 indicates that the notice was served on the respondents no. 1 and 2 and thereafter the record was summoned. The respondent no. 2 is represented by Sri Anchal Mishra whereas none has put in appearance on behalf of the respondent no. 1, consequently, the Court proceeded to hear the learned counsel for the parties and in absence of the respondent no. 1.

Briefly, the facts giving rise to this appeal are being noticed hereinafter, first:-

It is the case of the appellants that on 26.04.2014, one Sri Mehi Lal at around 08: 00 AM had left his house on his bicycle going towards Gosainganj Bazar. Sri Mehi Lal had stopped at the Radauli Chauraha for a cup of tea at the shop of Ram Keerat Pandey and thereafter as he left towards Gosainganj at that time a commander Jeep bearing No. UP 50B 8835 which was coming from Sultapur side towards Kadipur and was being driven rashly and negligently hit Mehi Lal and thereafter crushed him and fled. Sri Mehi Lal died on the spot.

In context with the aforesaid accident, the younger brother of Mehi Lal had informed about the accident to the police mentioning that a vehicle bearing No. UP 50 had crushed Mehi Lal and upon the said report, case crime No. 298 of 2014 was registered.

After due inspection, vehicle bearing No. UP 50B 8835 was found to be involved in the accident and at the relevant time was being driven rashly and negligently by its owner namely Ajay Prakash Yadav. It is in the aforesaid backdrop that the claimants preferred Claim Petition No. 243 of 2014.

The said claim petition was contested by Sri Ajay Prakash Yadav, the owner-driver of the vehicle bearing No. UP 50 B 8835.

Primarily, it was taken as a defence that the accident in question did not take place with the vehicle belonging to Ajay Prakash Yadav. It was also pleaded that even in the First Information Report the offending vehicle was described as having Registration no. UP 50B and this was an incomplete number. It was also stated that Ajay Prakash Yadav came to know about the accident the next day when the incident was reported in a Hindi daily Newspaper wherein the vehicle number mentioned was UP 50 B 780.

It was thus stated that the claim petition has incorrectly been filed against the vehicle bearing No. UP 50 B 8835 and moreover the petition was bad for want of impleading the owner and insurer of the actual vehicle involved in the accident bearing no. UP 50 B 780. The Insurance Company also took the similar defence.

Upon the exchange of pleadings, the Tribunal framed four issues.

Noticing the evidence on record, the Tribunal concluded that the accident did not occur with the vehicle bearing No. UP 50 B 8835 rather the vehicle involved was bearing No. UP 50 B 780.

The Tribunal also noticed that even though the vehicle bearing No. UP 50 B 8835 did possess all requisite documents and its driver also had a valid and subsisting driving license but that was of no avail as the vehicle involved was not U.P. 50 B 8835 and leaving the matter at that with the aforesaid finding, the claim petition came to be dismissed by means of award dated 09.02.2017 which is under challenge before this Court.

The submission of learned counsel for the appellant is that the

Tribunal erred in placing reliance over the newspaper article wherein the vehicle number was mentioned as U.P. 50 B 780.

It is urged that the newspaper article was apparently not admissible in evidence and the same could not have been made the basis of the finding. It is further urged that the claimants had placed the certified copies of the First Information Report as well as the charge sheet which indicated the prima facie involvement of the vehicle bearing No. UP 50 B 8835. Sri Ajay Prakash Yadav was charge sheeted and he was facing trial and this aspect has also been ignored by the Tribunal.

It is also urged that two eye witnesses were produced whose testimony was quite clear and categorical yet that has been ignored for inadequate reasons and as such the Tribunal erred in dismissing the claim petition and as such the matter required consideration and the claim petition deserves to be allowed.

The learned counsel for the respondent-Insurance Company urged that the burden of establishing the accident was on the claimants and since the Tribunal after assessing the evidence came to the conclusion that the vehicle bearing No. UP 50 B 8835 was not involved and this finding was based on the material on record, consequently, the claim petition was rightly dismissed and so also the appeal deserves to be dismissed.

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

The question before this Court is as to whether the findings returned by the Tribunal on issue no. (i) is justified and is based on material on record.

In order to answer the aforesaid question and from the perusal of the material on record, it reveals that the claimants had examined the wife of the deceased Smt. Gauri, the younger brother of the deceased namely Chhote Lal, Salik Ram and Ram Keerat Pandey were examined as Claimant witnesses Nos. 3 and 4 and both were the eye-witnesses.

As part of the documentary evidence, the claimants had filed the copy of the First Information Report, the copy of the postmortem report of the deceased Mehi Lal, the charge sheet against Sri Ajay Prakash Yadav, the documents relating to the vehicle bearing no. UP 50 B 8835.

The respondents on the other hand filed documents relating to the vehicle bearing No. UP 50 B 8835 and Sri Ajay Prakash Yadav examined himself as the sole witness. No evidence

documentary or oral was led on behalf of the Insurance Company.

It is in the aforesaid backdrop and noticing the aforesaid, the Tribunal found that since Smt. Gauri wife of the deceased and Chotey Lal, the brother of the deceased were neither the eye-witnesses and moreover they were interested witnesses, hence, their evidence was not quite material to ascertain whether the accident was caused by the vehicle bearing No. UP 50 B 8835.

The Tribunal discarded the evidence of the two eye-witnesses simplicitor on the ground that they were of the same village as that of the deceased. During cross examination of the said two witnesses there were certain discrepancies which in the opinion of the Tribunal was impactful and it cast a doubt over the veracity of the said two eye-witnesses and this was noticed in juxtaposition to the newspaper article where the accident was reported as having been caused by vehicle bearing No. UP 50 B 780. The Tribunal found the testimony of Sri Ajay Prakash Yadav to be more inspiring and consequently for the said reasons concluded that the vehicle bearing No. UP 50 B 8835 was not involved.

This Court has meticulously considered the evidence available on record and finds that the reasoning given by the Tribunal is not adequate.

The record would indicate that Ram Keerat Pandey who was examined as P.W. 4 was the person who had his tea-stall where Mehi Lal had stopped for a cup of tea and thereafter as he had moved towards Gosainganj, at that time, a Commander Jeep had hit and crushed Mehi Lal and fled. At the very same time, Sri Salik Ram was also at the tea-stall and he also witnessed the said accident. Both the said witnesses categorically stated that the vehicle involved was bearing UP 50 B 8835 and was a Commander Jeep. Both in their cross-examination did not deviate from the aforesaid statement regarding the occurrence of the accident, involvement of a Commander Jeep as well as disclosing the number as UP 50 B 8835.

Merely, because the P.W. 3 in his cross-examination stated that he was not aware of what was written in his examination-in-chief and that he was educated upto Class-VII, the Tribunal has incorrectly drawn the inference that a person who was educated would know what is written in his examination-in-chief and since he did not know that, consequently, his entire testimony is effaced.

Apparently, the manner in which the P.W. 3 and P.W. 4 narrated

the incidents and stated categorically regarding the involvement of the vehicle and its number, coupled with the fact that the First Information Report was lodged wherein the vehicle was mentioned as a Jeep bearing No. UP 50 B. It is only after investigation that the vehicle bearing No. UP 50 B 8835 was found and even a charge sheet was filed, this fact could not be disputed even by Ajay Prakash Yadav, the owner-driver of the vehicle bearing No. UP 50 B 8835. Even though, the owner-driver stated that his jeep did not meet with an accident but did not give any cogent reasons why would anyone implicate his vehicle. Moreover, the after prima facie investigation, the charge sheet has been filed and Sri Ajay Prakash Yadav was facing trial which was also not disputed.

In the aforesaid context, placing reliance on the newspaper article by the Tribunal is erroneous for the reason that the newspaper article was not admissible. Merely, because in the article it was mentioned that the vehicle involved in the accident was U.P. 50 B 780. It was not justified for the Tribunal to have based its finding solely on the newspaper report and discarding the evidence of the eye-witnesses for hypertechnical reasons.

This Court finds that in so far as the statement of P.W. 3 and P.W. 4 is concerned, it is quite clear and seeing their testimony, coupled with the fact that the charge sheet was filed after due investigation and the respondent no. 1 was facing trial, it clearly leads to the factum of the accident having occurred with the vehicle bearing No. UP 50 B 8835.

It is to be noticed that the claim petitions are to be decided on the principles of pre-ponderance of probabilities and more often than not it has been reiterated by this Court as well as by the Apex Court that hypertechnical view is not to be taken and once the foundational facts are established, the Tribunals are required to move ahead to compute the compensation.

Noticing the dictum of the Apex Court in ***Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr; (2020) 13 SCC 486, Vimla Devi and others Vs. National Insurance Company Limited and others 2019 (37) LCD page 333; Anita Sharma and Others Vs. New India Assurance Company Limited and Another (2021) 1 SCC 171.***

, this Court is of the clear opinion that the findings recorded by the Tribunal on issue no. (i) basing it on the news paper article was clearly erroneous. The evidence of P.W. 3 and P.W. 4 was credible and it ought to have been given its due weightage which has not been done.

Thus, the finding on issue no. 1 being patently erroneous is set aside. Since the Tribunal did not return any finding regarding the computation of compensation, accordingly, in the facts and circumstances, the matter is being remanded to the Claims Tribunal concerned to consider and decide the claim petition afresh taking note of the observations made by this Court and give its clear findings on each issue and decide the claim petition after affording full opportunity of hearing to the parties but without granting any unnecessary adjournments preferably within a period of three months from the date, the parties appear before the Tribunal.

In view of the aforesaid, the parties shall appear before the Tribunal on 18.12.2023 and the Tribunal shall thereafter as observed above decide the claim petition afresh.

With the aforesaid observations, the appeal is ***allowed***. The award dated 09.02.2017 passed in Claim Petition No. 243 of 2017 is set aside. Costs are made easy. The records of the Tribunal shall be returned forthwith.

Order Date :- 20.11.2023

Asheesh