

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 87 of 2021

Appellant :- United India Insurance Co.Ltd. Thru. Manager

Respondent :- Smt. Yasmin Fatima And Ors.

Counsel for Appellant :- Tarun Kumar Misra

Counsel for Respondent :- Balendu Shekhar

Hon'ble Jaspreet Singh,J.

Heard Shri Tarun Kumar Misra, learned counsel for the appellant and Shri Balendu Shekhar, learned counsel appearing for the claimant-respondents.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 10.03.2021 passed by the Motor Accident Claims Tribunal, Lucknow (North) in Claim Petition No.737 of 2015 wherein in a death case a sum of Rs.11,72,400/- alongwith 7% interest per annum has been awarded in favour of the claimant respondents.

Shri Tarun Misra, learned counsel for the Insurance Company has assailed the award primarily on two grounds:-

(i) It is urged that there was a discrepancy regarding the driving licence of the alleged driver of the vehicle in question; inasmuch as it was stated that the truck was being driven by Avilesh Kumar, son of Data Ram whereas the driving licence which was placed on record indicated the name of the driver as Avanish Kumar, son of Data Ram. It is also urged that this discrepancy could not be explained by the claimants and as such since the vehicle was not proved to be driven by a valid licence holder, consequently, the appellant ought to have been granted the right to recover from the owner.

(ii) The other submission of the learned counsel for the appellant is that the truck in question did

not possess a valid fitness certificate and for the aforesaid reason again the appellant ought to have been granted the benefit of recovery rights as the truck was being driven contrary to the policy condition. For the aforesaid reason, the appeal deserves to be allowed.

Learned counsel for the claimant-respondents has submitted that mere slight discrepancy in the name of the truck driver as was recorded in the driving licence will not impact the liability of the insurance company; inasmuch as whether the actual name was Avilesh Kumar or Avanish the fact is that both were shown to be son of Data Ram. Thus, merely a mistake in the spelling is not going to absolve the insurance company and its liability to indemnify the award.

Learned counsel for the respondents further submits that in so far as the issue of fitness certificate is concerned, the same has no substance for the reason that there is nothing on record to indicate that the truck was not having a fitness certificate nor any evidence was led by the insurance company at any stage, hence even at the appellate stage without any basis or any document/verification from the Regional Transport Officer the plea has been taken which is completely unsupported by any material evidence, hence deserves to be rejected and the appeal be dismissed.

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

As far as the factual controversy is concerned, it would indicate that the claimant-respondents had filed Claim Petition No.737 of 2015 before the Motor Accident Claims Tribunal, (North) Lucknow stating therein that on 11.09.2015 Abdul Farhan was going to his office from Rajajipuram as a pedestrian. While he had reached Campbell Road near Exon School, a truck bearing number UP 45/C-7378 which was being driven rashly and negligently hit Abdul Farhan, who had died on the spot. He was survived by his mother, younger brother who filed the claim petition.

Upon exchange of pleadings, the Tribunal framed five issues and after noticing the evidence available on record, it returned a finding that the death of Abdul Farhan was caused by rash and negligent driving of the truck bearing number UP 45/C-7378.

The Tribunal also noticed that the driver of the truck had a valid and a subsisting driving licence which was valid for the period 13.11.2007 to 12.11.2027 and as such the accident occurred on 1.09.2015 which indicates that the driver had appropriate and a valid licence. While dealing with the issue no.4, the Tribunal concluded that the insurance policy filed by the owner was valid on the date of the accident and thereafter the Tribunal went on to compute the compensation and awarded a sum of Rs.11,72,400/- alongwith 7% interest per annum by means of award dated 10.03.2021, which is under challenge before this Court.

As far as the first submission of the learned counsel for the appellant is concerned, the record indicates that the photocopy of the licence which was placed on record indicated the name of Avanish son of Data Ram. However, the First Information Report which was lodged it had recorded the name of Avilesh Kumar son of Data Ram.

Having considered the material on record, it is clear that in so far as the fact that the truck bearing number UP 45/C-7378 was involved in the accident, this is not in dispute. A valid driving licence has been filed on record bearing paper No.C-7/7 which is in the name of Avanish whereas in the First Information Report, the name of the driver has been recorded as Avilesh Kumar but what is common is that with both names the parentage has been shown as son of Data Ram.

Another fact that needs to be seen is that even though the insurance company is raising this dispute but before the Tribunal no evidence was led to indicate that Avanish son of Data Ram and Avilesh Kumar son of Data Ram are two separate persons. In absence of any evidence to the

contrary merely because there is a spelling mistake while the parentage of the driver is the same. The finding recorded by the Tribunal is appropriate and this Court does not find that there is any error in arriving at the same especially when no contrary evidence was led either by the owner or the driver or the insurance company. Thus the first submission of the learned counsel for the appellant fails.

The next submission relating to the fitness certificate is also baseless and has been noticed only to be rejected for the reason that the insurance company had taken a plea in its written statement but no evidence was led by the insurance company. It did not make any effort to either summon the owner or the driver or even get the fact verified from the concerned Regional Transport Office. Once having failed to do so apart from the fact that even before this Court, nothing has been brought on record in shape of additional evidence to buttress the submissions that the truck in question did not have a valid fitness certificate.

In view of the aforesaid, the second submission also fails as merely by raising a plea in the written statement without any evidence led will not persuade this Court to assume a fact which has not been proved that the truck in question did not have a fitness certificate. For the aforesaid reason, the second submission also fails.

In view of the aforesaid facts and circumstances, this Court finds that there is no merit in the appeal which is accordingly **dismissed**. The award dated 10.03.2021 passed by Motor Accident Claims Tribunal, North Lucknow in Claim Petition No.737 of 2015 is affirmed. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimant-respondents and any shortfall shall also be paid to the claimant-respondents as per the award within a period of sixty days from today. The record of the Tribunal be returned forthwith. Costs are made easy.

Order Date :- 21.11.2023
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