

Court No. - 19

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 120 of 2023

Appellant :- National Insurance Company Ltd., Lakhimpur Kheri Thru. Branch Manager

Respondent :- Nirmala Devi And 4 Others

Counsel for Appellant :- Jitendra Narain Mishra

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the appellant.
2. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act against the award dated 15.03.2023 whereby Motor Accident Claims Tribunal, Lakhimpur Kheri in Claim Petition No.379 of 2017, while allowing the claim petition, in a death case, it has awarded a sum of Rs.4,06,600/- along with 7.5% interest per annum by means of award dated 15.03.2023.
3. The instant appeal is reported to be barred by six days. It is in this view of the matter that notices were issued on I.A. No.1 of 2023 and in light of the report by the office dated 04.09.2023, service on the respondents no.1,2,3 and 5 is sufficient and not in respect of the respondent no.4.
4. Be that as it may, considering the fact that the respondent no.4 is the vehicle owner and the notice on the claimants and as well as the other insurance Company including the driver is found sufficient. The Court has considered the application No. 1 of 2023 and finds that the ground shown for condoning the delay is sufficient.
5. Accordingly, the application is **allowed**.

6. The delay is condoned and the appeal shall be treated to have been filed within time.

7. The Court thereafter heard the learned counsel for the appellant on admission of the appeal.

8. The submission of the counsel for the appellant is that the Tribunal has erred in not appreciating the evidence in the correct perspective inasmuch as it was the case of false implication and this has not been noticed. It is urged that first circumstance that raises doubt is the fact that the FIR was lodged with a delay of 13 months. It is further stated that there was no postmortem of the deceased and thirdly, it is stated that no document regarding treatment of the deceased was placed on record and lastly, eye-witness, who was examined on behalf of the claimants had made contradictory statement which did not inspire confidence in his testimony and for the said reason the Tribunal ought to have noticed these aspects with circumspection which has not been done resulting in miscarriage of justice.

9. It has further been urged that no documents in regard to the death of Ankit as occurred from the accident, was brought on record.

10. The Court has heard the aforesaid submissions and also perused the material on record. Apparently, what transpires is the fact that on 25.01.2015 Ankit was the deceased along with his uncle, who was riding on a motorcycle bearing No. U.P. 31 A.D. 9203. At around 05:00 P.M. the offending Truck bearing No. U.P. 30 A 9168 was driven rashly and negligently and hit the motorcycle, as a result, fell and sustained grievous injuries. He was first taken to the District Hospital in Lakhimpur Kheri from where he was referred to a higher centre at Lucknow and during his treatment there at around 07:00 A.M. he expired. It is in the aforesaid context that the Claim Petition No.379 of 2017

came to be filed.

11. The same was contested by the owner as well as insurance company but the record indicates that no evidence was led by either the owner or the insurance company in respect of the plea raised in their written statements. On the other hand, the claimant had filed the documents regarding the FIR as well as the vehicle being insured and the driver having a valid and subsisting license. Noticing the statements of the witnesses, the Tribunal concluded that the accident occurred on 25.01.2015 on account of rash and negligent driving of truck bearing No.U.P. 30 A 9168 and since the same was duly insured and its driver having the requisite documents after computing the amount, the insurance company was directed to indemnify the award.

12. In the aforesaid context, if the submission of the learned counsel for the appellant is tested, it would be found that mere delay in filing the FIR is not going to have any impact, for the reason that in furtherance thereof the owner, who was even chargesheeted was facing a criminal trial. Despite the aforesaid fact, he did not enter into the witness box to deny the fact that the accident has not taken place with his vehicle. Neither the driver was brought before the Court nor he entered into the witness box to deny the accident. In the aforesaid circumstances, certain minor discrepancy in the statements of the eyewitnesses is not going to cast a cloud over the veracity of their statements.

13. The aforesaid argument is also fallacious for the reason that there was a clear statement that the accident had occurred on account of rash and negligent driving of the truck bearing No. U.P. 30 A 9168. This also stands corroborated from the testimony of the eye witness and in contrast, there is no evidence to the contrary, therefore, the aforesaid submission also fails.

14. Considering the facts and circumstances that the plea which has been raised by the appellant has not been proved by leading any evidence, to the contrary. Thus, it cannot be said that the findings recorded by the Tribunal suffer from any error.

15. In view of the aforesaid, this Court finds that there is no parable error in the award dated 15.03.2023 passed in Claim Petition No.379 of 2017 which required interference and thus it is affirmed.

16. The appeal is **dismissed at the admission stage**. No order as to cost. The statutory amount deposited before this Court shall be remitted to the Tribunal, to be released in favour of the claimants-respondents and remaining sum shall also be paid to the claimants with upto date interest as per the award within 60 days from the date of this order.

Order Date :- 6.12.2023

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