

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 332 of 2023

Appellant :- Reliance General Insurance Company Ltd.,
Lucknow Thru. Manager Legal

Respondent :- Smt. Uma Singh And Others

Counsel for Appellant :- Anchal Mishra

Hon'ble Jaspreet Singh,J.

Heard Shri Anchal Mishra, learned counsel for the appellant.

The instant appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988 assailing the judgment and award dated 26.07.2023 passed by the Motor Accident Claims Tribunal, Raebareli in Claim Petition No.124/2019, whereby in a death case, a sum of Rs.29,01,260/- along with 7% interest has been awarded in favour of the claimants-respondents.

While assailing the impugned award, learned counsel for the appellant has raised two fold submissions. It is primarily urged that the alleged accident took place on 08.02.2019 while Hargendra Bahadur Singh at around 05:30 in the evening was riding his motorcycle bearing UP-78-FC-6569 and he was travelling from his house to Utragauri. While he had reached Lalganj-Prayagraj Road at that time another motorcycle bearing UP-72-V-9373 which was being driven rashly and negligently hit the motorcycle of Hargendra Bahadur Singh where he received grievous injuries and later he succumbed to that.

It was stated that the deceased was serving in the Indian Army and was about 41 years of age. It is in this context that the claimants filed a claim petition seeking compensation in terms of the provisions of Motor Vehicles Act, 1988 registered as Claim Petition No.124/2019.

It is further submitted that it was alleged by the claimants that an FIR was lodged against unknown persons. Later an application was moved that the claimants had received the information from an eye-witness indicating the number of the offending vehicle i.e. UP-72-V-9373 and that it was being driven by one Anil Kumar Yadav.

It is further urged that later another application was moved by the alleged driver indicating that he was riding the said motorcycle and the accident occurred. It is thus, stated that

there is apparent discrepancy inasmuch as on the one hand the claimants lodged an FIR against unknown person and later two separate applications were moved, one through claimants and the other by the driver-owner of the offending motorcycle. It is thus urged there are discrepancy and this aspect has not been appropriately considered by the Tribunal while considering the Issue No.1.

It is further urged that since the deceased was not wearing helmet, consequently, he also contributed to the accident and this aspect has also not been considered by the Tribunal.

The Court has considered the aforesaid and also perused the material on record.

Apparently, the record indicates that the factum of the accident and death of Hargendra Bahadur Singh is not in dispute. All what are sought by the learned counsel for the appellant is that the cast certain doubt regarding the manner in which the accident took place as well as the involvement of the offending vehicle and the alleged driver.

Be that as it may, the claimants had examined eye witness. The claimants had also filed ample documentary evidence and in pursuance of the FIR, the named driver namely Anil Kumar Yadav was also charge-sheeted. In the aforesaid backdrop as well as in light of the decisions of the **Sunita & Ors. v. Rajasthan State Road Transport Corporation & Anr., 2019 SCC Online SC 195 and Vimla Devi and others Vs. National Insurance Company Limited and others 2019 (37) LCD page 333**, all what the claimants are required to establish by cogent evidence is the occurrence of accident, the involvement of the offending vehicle and the negligence and once the foundational facts are established, the Tribunal is required to move ahead to calculate the compensation and determine the liability upon which the award is to be affixed.

In the aforesaid circumstances, in the instant case, there is no denial of the fact that there was no evidence led by the Insurance Company either the statement of the eye witness or to indicate that the vehicle which was involved was not being driven by Anil Kumar Yadav.

In light of the aforesaid, this Court finds that there is no error committed by the Tribunal in returning a finding regarding negligence and involvement of the offending vehicle. It is also not disputed that the factum/deceased was enrolled with the Indian Army and the compensation has also been appropriately computed by the Tribunal.

Insofar as the none wearing of helmet is concerned that in itself cannot be a ground for treating it as a case of contributory negligence inasmuch as apart from complete negligence is required to establish that in what manner the person concerned had contributed to the accident. There is no such evidence in this regard.

In view of the aforesaid, this Court finds that there is no error committed by the Tribunal while passing the award dated 26.07.2023. Consequently, the appeal is **dismissed at the admission stage itself.**

The statutory amount deposited by the appellant before this Court shall be remitted to the Tribunal concerned to be released in favour of the claimants-respondents as well as remaining sum shall be paid to them in terms of the award within 60 days from the date of receipt of a certified copy of this order is placed before the appellant.

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

Order Date :- 7.11.2023

Rakesh/-