

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 336 of 2023

Appellant :- The Oriental Insurance Company Ltd.
Thru. Manager Lko.

Respondent :- Radha Devi And 2 Others

Counsel for Appellant :- Satyajit Banerji

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the appellant-Insurance Company who has filed the instant appeal under Section 173 of the Motor Vehicle Act. 1988 assailing the award dated 09.08.2023 passed in Claim Petition No.186 of 2015 whereby in a death case, a sum of Rs.12,12,400/- alongwith 7.5% interest per annum has been awarded in favour of the claimant-respondents.

2. Submission of the learned counsel for the appellant is that the factum of accident with the offending vehicle was not cogently proved and the Tribunal has relied upon mere surmises to grant the award which is not in consonance with the settled legal principles and as such the award deserves to be set aside.

3. Having considered the aforesaid submissions and from the perusal of the material on record, this Court finds that a claim petition bearing No.186 of 2015 was filed by the respondents no.1, 2 and 3 under Section 166 of the Motor Vehicles Act before the Claims Tribunal with the averments that on 28.09.2014 the deceased Sunil Kumar Singh was riding his motorcycle. However, on the given date, a Mahindra Scorpio Jeep bearing registration number U P 43/M0005 was being driven rashly and negligently and hit the motorcycle of Sunil Kumar Singh who received grievous injuries and later succumbed to his death. In pursuance thereof, an First Information Report was lodged and in the said First Information Report it was indicated that the number of the offending vehicle was U P 43/N0005. Even the

written complaint which was given by Upendra Singh relative of the deceased also mentioned the vehicle number as U P 43/N0005 but later it was improved and in the case at hand, it was stated that the accident was caused by Mahindra Scorpio Jeep bearing number U P 43/M0005 and as such this was on account of the collusion between the claimants and the owner only to fastening the liability on the Insurance Company whereas as per the admitted case, the accident was caused by a different vehicle bearing number U P 43/N0005.

4. Considering the submissions of the learned counsel for the appellant in light of the material on record, this Court finds that specifically on behalf of the respondents the owner appeared as a witness and he clearly stated that he is the owner of the vehicle bearing number U P 43/M0005 and that it was being driven by his driver, namely, Peshkar Gupta. It was also stated that the vehicle was duly insured and the driver also had a valid and a subsisting licence and this particular vehicle U P 43/M0005 was duly insured.

5. The Tribunal also found that there was no evidence filed by Sunil Kumar Singh, the owner of the vehicle to state that the accident was caused by some other vehicle and not his own. Apart from taking a plea in the written statement, there was no cogent evidence led on behalf of Sunil Kumar Singh or the driver Peshkar Gupta which could create any doubt over the occurrence as well as the involvement of the vehicle in question. Since neither the driver nor the owner led any evidence on the contrary the claimants had produced the eye witness who clearly stated that the vehicle involved was U P 43/M0005 and in absence of any contrary evidence, the burden was discharged by the claimants whereas the plea if raised ought to have been substantiated by the owner and the driver which was not done.

6. In light of the aforesaid and in absence of any contrary evidence, the finding recorded by the Tribunal does not suffer from any error; inasmuch as the Tribunal is required to deal with the claim petition in a summary manner relying upon the doctrine of preponderance of probabilities and

having done so, this Court does not find that there is any error. Apart from the fact that the award has been calculated and a sum of Rs.12,12,400/- alongwith 7.5% interest per annum has been awarded, which is just and appropriate.

7. Accordingly in the given facts and circumstances, this Court does not find that there is any error which may persuade this Court to interfere in the award dated 09.08.2023 passed in Claim Petition No.186 of 2015. Consequently, the appeal being devoid of merits is dismissed at the admission stage itself and the award dated 09.08.2023 is affirmed. The statutory amount deposited by the appellant shall be remitted to the Tribunal to be released in favour of the claimant-respondents and the remaining sum shall also be paid to the claimants in accordance with the award.

8. With the aforesaid, the appeal is **dismissed**. In the facts and circumstances, there shall be no order as to costs.

Order Date :- 9.11.2023

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