

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 344 of 2023

Appellant :- National Insurance Company Ltd., Lucknow Thru. Manager

Respondent :- Haridutt Prasad Tewari And Others

Counsel for Appellant :- Mrs. Pooja Arora

Hon'ble Jaspreet Singh, J.

Heard Mrs. Pooja Arora, 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 05.07.2023 passed by the Motor Accident Claims Tribunal, Pratapgarh in Claim Petition No.39/2013, whereby in an injury case, a sum of Rs.90,115/- along with 7% interest has been awarded in favour of the claimants-respondents.

Learned counsel for the appellant while assailing the award has primarily drawn the attention of the Court to the fact that in terms of the alleged accident which is said to have occurred on 21.04.2012, an FIR was lodged in respect thereto by the nephew of the claimant who had specifically mentioned that the vehicle involved in the accident was bearing UP-72-C-7578.

It is further contended that when the matter went up before the Tribunal and the parties led their evidence, a complete somersault was taken by the claimants. They introduced the vehicle that caused the accident was UP-72-Q-2026.

It is further urged that this discrepancy could not be explained by the claimants nor the witnesses, accordingly, it clearly appears that in order to falsely implicate and to shift the indemnification of the award on the insurance company, this new vehicle bearing UP-72-Q-2026 was introduced as this was insured with the appellant and thus in light of the aforesaid conclusion the findings returned by the Tribunal while dealing with the Issues No.1 and 2 are erroneous which has prompted the appellant Insurance Company to institute the above appeal.

In order to test the submission of the learned counsel for the appellant, it will be relevant to notice certain brief facts of the case as involved in the appeal.

Shri Haridutt Prasad Tiwari, the claimant, filed a Claim Petition

No.39/2013 before the Motor Accident Claims Tribunal, Pratapgarh. with the averment that on 21.04.2021 at 08:45 in the morning, the claimant was moving from Lalganj towards Kalakankar Marg however, as he reached the Indira Chowk, the offending vehicle bearing UP-72-Q-2026 which was being driven rashly and negligently hit the claimant, as a result, he sustained grievous injuries. The case came to be contested by the defendants and the owner filed a separate written statement so also the appellant insurance company.

Upon exchange of pleadings, the Tribunal framed five issues and thereafter taking note of the oral and documentary evidence, it concluded that the accident in question occurred on account of rash and negligent driving by the motorcycle bearing UP-72-Q-2026. It also found that the driver had a valid and subsistence licence and the insurance policy was valid and accordingly the Tribunal went on to compute the compensation for the injuries and awarded a sum of Rs.90,115/- along with 7% interest. It is this award which has been challenged on the ground as noticed hereinabove.

Having considered the aforesaid and looking into the material on record, apparently what transpires is the fact that after the accident the nephew of the claimant got an FIR lodged where he had mentioned the offending vehicle bearing No.UP-72-C-7578. Even the police filed the charge-sheet in respect of the said vehicle bearing UP-72-C-7578. However, during trial of the claim petition, the claimant including his witnesses had clearly deposed that it was the offending vehicle bearing No.UP-72-Q-2026 which caused the accident. It is taking note of the aforesaid that the Tribunal also arrived at a conclusion that it is the vehicle bearing No.UP-72-Q-2026 which was involved.

The contention of the learned counsel for the appellant in disputing the same is the fact that once the nephew who had lodged an FIR three days after the accident giving a particular number as UP-72-C-7578 as well as the fact that the charge-sheet was also against the vehicle bearing No.UP-72-C-7578 and the owner of the said vehicle who was impleaded as one of the party also filed his written statement, wherein he has denied the said accident.

In the aforesaid circumstances, it is urged that in this context it was not open for the claimants to have diverted from their original case and this aspect of the matter has not been considered by the Tribunal.

Coming to the aforesaid submissions and on perusal of the

material on record wherein the appellant has also filed the depositions of the claimants as well as his witnesses, it would reveal that even the claimant and his nephew though may be somehow interested but the fact remains that the independent eye witness was also examined on behalf of the claimants and in his cross-examination, he has stated that he has a shop at the intersection. He had seen the accident by himself. Even on putting a suggestion, the said witness clearly stated that the vehicle involved was bearing No.UP-72-Q-2026 and it is incorrect to suggest that the said accident did not take place with the said vehicle.

The record further indicates that the appellant Insurance Company who has come up in appeal did not lead any evidence to substantiate the claim as raised by them. So much so the PW-2 Ajay Kumar Singh was not even confronted with the issue regarding the involvement of the vehicle as mentioned in the FIR, which was later stated by the claimants and the witnesses to be UP-72-Q-2026.

It is taking an overall view that the Tribunal has arrived at a finding which cannot be said to be perverse or that it is such a view which no prudent person can arrive at.

Considering the aforesaid, this Court finds that there is no merit in this appeal which is accordingly dismissed at the admission stage itself and the award dated 05.07.2023 passed by the Motor Accident Claims Tribunal, Pratapgarh in Claim Petition No.39/2013 is affirmed. The statutory deposit made by the appellant Insurance Company shall be remitted to the Tribunal concerned to be released in favour of the claimants as per the impugned award and the remaining sum, if outstanding, shall also be paid within 60 days from the date, this judgment is placed before the appellant Insurance Company.

Costs are made easy.

Order Date :- 22.11.2023

Rakesh/-