Neutral Citation No. - 2024:AHC-LKO:42763

Reserved

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 399 of 2014

Appellant :- Girendra Bahadur Singh
Respondent :- Santosh Kumar Mishra And Ors.
Counsel for Appellant :- Dhirendra Singh
Counsel for Respondent :- Rajendra Jaiswal

Hon'ble Manjive Shukla,J.

1. Heard Sri Dhirendra Singh,learned counsel appearing for the appellant and Sri Rajendra Jaiswal, learned counsel appearing for the opposite parties.

2. The appellant through this appeal has challenged the order and award dated 28.1.2014 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.5, Raebareli whereby M.A.C.P. No.111 of 2010 has been allowed with a direction to appellant to pay compensation amounting Rs.1,57,500/- to the claimants along with interest at the rate of 6% per annum from the date of filing of the claim petition before the Tribunal till the date of actual payment.

3. Facts of the case, in brief, are that son of the claimants Master Shivansh Mishra was hit by a tractor which resulted in his death on 24.3.2009 at about 9.15 A.M. Initially an FIR was lodged which was registered as Case Crime No.246 of 2009 under Section 279, 304A IPC in Police Station Kheeron,

District Raebareli and in the FIR, description of the tractor and its registration number was not given, but later on, the police investigated the matter and filed charge sheet against one Mr. Sahdev Lodh. In the charge sheet, it was mentioned that the accident in question had taken place by a tractor bearing Registration No. UP33-E/9717 due to negligent driving of Mr. Sahdev Lodh. Later on, Mr. Santosh Kumar Mishra i.e. father of the deceased filed an application before the Superintendent of Police, Raebareli mentioning therein that the police has not conducted proper investigation in the matter and has submitted charge sheet with incorrect tractor number whereas accident in question took place with a new tractor which was being driven negligently by one Mr. Nankulli Singh. On the basis of the application filed by Mr. Santosh Kumar Mishra, the Superintendent of Police, Raebareli transferred the investigation of the matter to another Investigating Officer vide order dated 17.6.2009. The Investigating Officer thereafter conducted the investigation and recalled the earlier charge sheet filed in the matter and filed a fresh charge sheet on 10.10.2009 and this time the police found that tractor bearing Registration No.UP35-H/5511 owned by Mr. Ashok Singh was involved in the accident in question and the said tractor was being driven negligently by one Nankulli Singh.

4. The claimants filed Claim Petition No.111 of 2010 before the Motor Accident Claims Tribunal, Rarebareli and there they took stand that the accident in question has taken place by the tractor bearing Registration No.UP33-E/9717 which was being driven negligently by Mr. Sahdev Lodh. The

claimants led the evidence and on the basis of evidence, the Motor Accident Claims Tribunal, Raebareli has concluded that the accident took place by tractor bearing Registration No.UP33-E/9717 owned by appellant i.e. Mr. Girendra Bahadur Singh and the said tractor at the time of accident was being driven negligently by Mr. Sahdev Lodh and thereafter the learned Tribunal has awarded compensation amounting Rs.1,57,500/- in favour of the claimants, payable by the present appellant.

5. Mr. Dhirendra Singh, learned counsel appearing for the appellant has argued before this Court that the order and award dated 28.1.2014 passed by the Motor Accident Claims Tribunal, Raebareli in M.A.C.P. No. 111 of 2010 is unsustainable as father of the deceased Mr. Santosh Kumar Mishra himself gave an application to the Superintendent of Police, Raebareli mentioning therein that the police has not conducted proper investigation in the matter and has filed charge sheet against Mr. Sahdev Lodh with incorrect tractor number though the tractor which hit his son was new and was being driven by Mr. Nankulli Singh and on his application, the police again investigated the matter and recalled the earlier charge sheet and filed a fresh charge sheet mentioning therein that the accident in question took place by the tractor bearing Registration No.UP35-H/5511 owned by Mr. Ashok Singh and at the time of the accident the said tractor was being driven negligently by Mr. Nankulli Singh, then there was no occasion for the father of the deceased to take a different stand while filing the claim petition.

6. Mr. Dhirendra Singh, learned counsel appearing for the

appellant has vehemently argued that all the documents were placed by the appellant before the Motor Accident Claims Tribunal, Raebareli i.e. charge sheet which was later on cancelled, fresh charge sheet filed by the police mentioning Tractor No.UP35-H/5511, application given by Mr. Santosh Kumar Mishra i.e. father of the deceased and order for change of Investigating Officer passed by the Superintendent of Police, Raebareli but learned Tribunal without there being any cogent contrary evidence has not accepted the evidence led by the appellant and straightaway has relied on the version of the claimants that the accident took place by tractor bearing Registration No.UP33-E/9717 which was being driven negligently by Mr. Sahdev Lodh and thereby has awarded compensation against the appellant.

7. Mr. Dhirendra Singh, learned counsel appearing for the appellant has concluded his arguments and has submitted that since the evidence led by the appellant has not been considered in its true perspective therefore, the order and award dated 28.1.2014 passed by the Motor Accident Claims Tribunal, Raebareli in M.A.C.P. No.111 of 2010 is liable to be set aside and the matter is liable to be remanded to the Motor Accident Claims Tribunal, Raebareli to be decided afresh.

8. On the other hand, Sri Rajendra Jaiswal, learned counsel appearing for Opposite Parties No.1 and 2 has argued that the claimants led evidence before the Motor Accident Claims Tribunal and proved that the accident in question took place by the tractor bearing Registration No.UP33-E/9717 which was being driven negligently by Mr. Sahdev Lodh and since the appellant is the owner of the said tractor, the

Tribunal has awarded compensation in favour of the claimants payable by the appellant as such, order and award dated 28.1.2014 passed by the Motor Accident Claims Tribunal, Raebareli in M.A.C.P. No.111 of 2010 does not suffer with any infirmity or illegality.

9. I have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the record of the concerned Tribunal.

10. I find that the Motor Accident Claims Tribunal has disbelieved the version of the appellant and the version of the police in fresh investigation and fresh charge sheet filed in relation to the accident in question only for the reason that the tractor bearing Registration No.UP35-H/5511 was registered with the concerned Regional Transport Officer in the month of September, 2009 and its insurance cover was valid from 6.9.2009 to 7.9.2010 therefore, the said tractor could not have been involved in the accident in question which took place on 24.3.2009 as on the said date the tractor itself was not in existence. For ready reference, the finding recorded by the learned Tribunal in its order dated 28.1.2014 is extracted as under:

> याचीगण के विद्वान अधिवक्ता का तर्क है कि वास्तव में वाहन ट्रैक्टर नम्बर यू0पी033इ/9717 के चालक द्वारा तेजी व लापरवाही से उक्त वाहन को चलाने के कारण दुर्घटना घटित हुई, बाद मे वाहन स्वामी गिरेन्द्र बहादुर सिंह ने अपने उपरोक्त ट्रैक्टर को बचाने के लिए तथा क्षतिपूर्ति न देना पड़े, वाहन संख्या–यू0पी035एच/5511, जिसका आर0सी, बीमा वैध था, को संलिप्त होना बताया। विपक्षी द्वारा उपरोक्त तर्क का खण्डन किया गया, तर्क रखा गया कि वास्तव में गिरेन्द्र बहादुर के ट्रैक्टर नम्बर यू0पी033इ/9717 से कोई दुर्घटना नहीं हुई थी, इस कारण बाद में ननकुल्ली के विरूद्ध आरोप पत्र आया और ट्रैक्टर नम्बर यू0पी035एच/5511 की संलिप्तता दिखाई गई है।
>
> मैंने पत्रावली का विस्तार से अवलोकन किया। पत्रावली में संलग्न कागजात के अवलोकन से स्पष्ट है कि ट्रैक्टर

नम्बर यू0पी035एच/5511 सितम्बर 2009 को पंजीकृत कराया गया। उसका बीमा भी 7.9.09 से 6.9.2010 तक वैध है। का0सं0 33ग1 पत्रावली में संलग्न है। दुर्घटना दिनांक 24.3.09 की कही गई है। इस प्रकार याचीगण के विद्वान अधिवक्ता के इस तर्क में बल है कि दुर्घटना ट्रैक्टर नम्बर यू0पी035एच/5511 से नहीं हुई बल्कि ट्रैक्टर नम्बर यू0पी033इ/9717 से हुई थी। विवेचक ने ट्रैक्टर नम्बर यू0पी033इ/9717 को सीज किया था बाद में विपक्षी संख्या–2 को पुलिस ने गिरफ्तार किया था, उसने न्यायालय से अपनी जमानत करायी।

याचीगण की तरफ से प्रथम सूचना रिपोर्ट अप0सं0 246/09, धारा 279, 304ए भा0द0सं0 की सत्यापित फोटो प्रति 23ग1/2, चालक सहदेव के विरूद्ध दाखिल आरोप पत्र की प्रमाणित फोटो प्रति 24ग1/2, नक्शा नजरी की प्रमाणित फोटो प्रति 25ग1/2 तथा मृतक शिवांग के पोस्टमार्टम रिपोर्ट की प्रमाणित फोटो प्रति 26ग1/2 दाखिल की गई है। इसके अतिरिक्त आर0सी0 ट्रैक्टर संख्या–यू0पी033ई/9717 की फोटो कापी 4ग1/2, फोटो कापी प्रथम सूचना रिपोर्ट 4ग1/3, फोटो कापी नकल आदेश दिनांकित–9.4.09 4ग1/5, फोटो कापी नकल प्रार्थना पत्र दिनांकित 31.3.09 4ग1/7, फोटो कापी नकल प्रार्थना पत्र दिनांकित–25.3.2009 4ग1/9, फोटो कापी नकल आदेश दिनांकित–25.3.09 4ग1/11 दाखिल की गई है।

इस प्रकार स्पष्ट है कि वास्तव में दुर्घटना विपक्षी संख्या 2 सहदेव द्वारा ट्रैक्टर संख्या–यू0पी033ई/9717 को तेजी और लापरवाही से चलाने के कारण मृतक शिवांग को टक्कर मारी गई, जिससे उसे गम्भीर चोटें आयी और उन्हीं चोटों के परिणाम स्वरूप उसकी मृत्यु हो गई।

विपक्षीगण सूची 62ग1/1 से मु0अप0सं0 246/09, धारा 279, 304ए भा0दं0वि0, थाना खीरों में वादी संतोष कुमार मिश्रा के प्रार्थना पत्र में एस0पी0 रायबरेली द्वारा विवेचना स्थानान्तरित करने के आदेश की सत्यापित प्रति 62ग1/2 तथा वादी द्वारा विवेचनाधिकारी को प्रेषित शपथपत्र की सत्यापित छायाप्रति दाखिल की गई है, लेकिन जैसा कि ऊपर चर्चा की जा चुकी है, चूंकि उक्त वाहन दुर्घटना के समय अस्तित्व में नहीं था और न ही उससे दुर्घटना हुई इसलिए विपक्षीगण द्वारा दाखिल कागजात विश्वसनीय नहीं है।

पत्रावली के परिशीलन से यह भी स्पष्ट है कि अप0 सं0 246/09, धारा 279, 304ए भा0दं0सं0, थाना खीरों, जिला रायबरेली की विवेचना में विवेचक श्री रामसजीवन यादव द्वारा जानबूझकर त्रुटि की गई है। उन्होंने अपने दायित्वों का सही निर्वहन नहीं किया है। उन्होंने ट्रैक्टर संख्या–यू0पी0 35एच/5511 दुर्घटना के समय अस्तित्व में न होते हुए भी उसके चालक के विरूद्ध गैर जिम्मेदारी पूर्ण कृत्य करते हुए, आरोप पत्र दाखिल किया है, या तो उन्होंने अपने कर्तव्यों का सही ढंग से निर्वहन नहीं किया है या उन्होंने लापरवाही बरती है। अतः उनके विरूद्ध अलग से प्रकीर्ण वाद दर्ज कर कार्यवाही सुनिश्चित हो।

11. This Court finds that the Motor Accident Claims Tribunal has discarded the evidence led by the appellant only for the reason that since tractor bearing Registration

No.UP35-H/5511 was registered in the month of September, 2009 and the accident in question took place on 24.3.2009 therefore, on the date of accident in question the said tractor was not in existence but the said reason given by the Tribunal does not appear to be sustainable as for determining the existence of the tractor which has been registered as UP35-H/5511, the date of its purchase by Mr. Ashok Singh is very relevant as there may be possibility that the said tractor may have been used by Mr. Ashok Singh without getting it registered by the competent authority and later on it may have been registered in the month of September, 2009.

12. This Court is of the view that father of the deceased Mr. Santosh Kumar Mishra himself filed an application before the Superintendent of Police, Raebareli and requested for change of the Investigating Officer on the ground that the tractor which hit his son was new and was being driven by Mr. Nankulli Singh and thereafter in the investigation, it revealed that the tractor involved in the accident in question was having registration No.UP35-H/5511 and was being driven by Mr. Nankulli Singh and on that basis charge sheet has also been filed therefore, the learned Tribunal ought to have been careful while scrutinizing the evidence led by the claimants and the appellant and further unless the date of purchase of tractor bearing Registration No. UP35-H/5511 was before the Tribunal, there was no occasion for the Tribunal to record a finding that on the date of accident i.e. 24.3.2009 the tractor bearing Registration No.UP35-H/5511 was not in existence.

13. In view of the aforesaid reasons, this Court is of the

view that Motor Accident Claims Tribunal, Raebareli has not considered the evidence available before it in its true perspective.

14. In the result, this appeal is allowed. The order and award dated 28.1.2014 passed by the Motor Accident Claims Tribunal, Raebareli/Additional District Judge, Court No.5, Raebareli in M.A.C.P. No.111 of 2010 (Santosh Kumar Mishra and another Vs. Girendra Bahadur Singh and another) is set aside. The matter is remanded to the Motor Accident Claims Tribunal, Raebareli for deciding M.A.C.P. No.111 of 2010, afresh.

15. Let the record of M.A.C.P. No.111 of 2010 be returned to the Motor Accident Claims Tribunal, Raebareli forthwith.

Order Date :- 10.6.2024
Salim

Digitally signed by :-
SALIM PRAVEJ
High Court of Judicature at Allahabad,
Lucknow Bench