

Court No. - 6

Case :- FIRST APPEAL FROM ORDER No. - 103 of 2015

Appellant :- National Insurance Co. Ltd. Thru. Regional Manager

Respondent :- Ganga Ram And 5 Others

Counsel for Appellant :- Ravindra Pratap Singh

Counsel for Respondent :- Shrikant Misra

Hon'ble Rajnish Kumar,J.

1. Heard Sri Ravindra Pratap Singh, learned counsel for the appellant and Sri Shrikant Mishra, learned counsel for the respondents no.1 to 4. None appeared on behalf of the other respondents despite sufficient service.

2. This F.A.F.O. under Section 173 of Motor Vehicles Act 1988 has been filed against the judgment and award dated 18.11.2014 passed by Additional District Judge, Court No.4/Motor Accident Claims Tribunal, Sultanpur in Claim Petition No.414/2012 'Gangaram and others versus Jai Prakash Tiwari and others', by means of which the claim petition has been allowed.

3. The sole argument advanced by learned counsel for the appellant is that the F.I.R. was lodged in regard to the accident in question, against an unknown vehicle, in which the final report was submitted. However, the protest petition was filed and he does not know the fate of the said petition but in any case since the final report was submitted, it cannot be said that the accident had happened. However, the learned tribunal without considering that the final report was submitted in the matter and only relying on the evidence of P.W.2 and P.W.3 allowed the claim petition, whereas P.W.2 and P.W.3, who are said to be the eye witnesses were detected by the claimant-respondents after ten days of occurrence. He further submits that the driver of the offending vehicle had appeared as D.W.1

who had denied the accident, which has also not been considered. Thus, submission is that the accident is not proved, even then the claim petition has been allowed. Therefore the impugned judgment and award is not sustainable and liable to be set aside.

4. Per contra, learned counsel for the respondents submits that the final report was submitted in the matter and thereafter the protest petition was filed. Even otherwise the submission is that on the basis of contents of the F.I.R. or filing of the final report cannot be a ground for rejection of the claim petition because the claim petition is to be considered on the basis of the evidence adduced before the tribunal. He relies on judgment and order dated 01.10.2021 passed by the Hon'ble Supreme Court, in the case of *National Insurance Company Ltd. Versus Chamundeswari and others; Civil Appeal No.6151 of 2021*. He further submits that P.W.2 and P.W.3 are the eye witnesses, who proved the case and nothing could be extracted by the appellant in cross examination, which may create any doubt about the veracity of their evidence. He further submits that driver, who had appeared as D.W.1, has though denied the accident but his testimony indicates that he was present on the spot at the time of the accident and ran away after the accident. Thus, the submission is that learned tribunal has rightly and in accordance with law allowed the claim petition after considering the pleadings, evidence and material on record and the impugned judgment and award does not suffer from any illegality or error, therefore the appeal is liable to be dismissed.

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The claim petition was filed alleging that the accident had occurred on 20.10.2012 at 7:00 p.m. in the evening near village

Mujesh crossing, Police Station Krurebhar, District Sultanpur. The wife of the claimant-respondent no.1 Jharna Devi had gone on invitation and while she was coming back on her left side of road to her home on foot, tractor No.U.P. 42 U/4689 being driven rashly and negligently by its driver, came from the side of Faizabad and after coming on the footpath, hit the deceased Jharna Devi and ran away towards Sultanpur. The deceased got serious injuries in the accident. On information, the claimant-respondents reached on the spot and the deceased in the injured condition was admitted in the district hospital, Sultanpur, where she died. Accordingly, the claim petition was filed claiming compensation of Rs.13,50,000/- and also claims on other heads. The written statement was filed by the respondent nos.1 and 2 i.e. the owner and the driver denying the averments made in the claim petition. The insurance company i.e. respondent no.3/appellant also contested the case by filing written statement denying the averments made in the claim petition. On the basis of pleadings and the evidence, 5 issues were framed and thereafter the evidence was adduced by the parties.

7. While considering the first issue in regard to the accident, the learned tribunal after considering the evidence of P.W.2 and P.W.3 came to the conclusion that the deceased was hit by the Tractor No.U.P. 42 U/4689 being driven rashly and negligently by its driver. D.W.1 i.e. driver of the vehicle appeared in the witness box and in his testimony in the cross examination he has stated that while he reached on the spot, he saw a lady in injured condition. He tried to save her but he does not know as to who was at fault in the accident and he ran away from the spot due to fear of people and after filling oil in his vehicle did not come back to the spot. Evidence of P.W.1 and P.W.2, who were eye witnesses have proved the accident and D.W.1 has though denied the accident, but his testimony indicates that he

was on the spot at 7:00 p.m. in the evening on the date of accident, which has been admitted by him and the aforesaid statements indicates that he ran away from the spot after the accident. Otherwise, if the injured was there since prior to his reaching the spot, there was no occasion for him to run away from the spot and his presence on the spot at the exact time, when the accident had occurred also indicates that the accident had occurred from the tractor in question and he was driving the tractor.

8. So far as the plea of final report in the matter is concerned, it is not in dispute that after the final report, the protest petition was filed and the parties does not know the fate of the protest petition. Even otherwise, merely because the final report was filed in the matter, it cannot be said that the testimony of the witnesses before the tribunal is not reliable, whereas nothing could be extracted in the cross examination from P.W.2 and P.W.3, which may create any doubt on their testimony and in view of the evidence of D.W.1- driver of the vehicle, the accident on account of rash and negligent driving of the vehicle is proved. The Hon'ble Supreme Court, in the case of *National Insurance Company Ltd. Versus Chamundeswari and others(supra)*, has held that if any evidence before the tribunal runs contrary to the contents in the F.I.R., the evidence which is recorded before the tribunal has to be given weightage over the contents of the F.I.R..

9. In view of above and considering the overall facts and circumstances of the case, this Court does not find any substance in the contention put forth by learned counsel for the appellant. The tribunal has passed the judgment and award in accordance with law after considering the pleadings of the parties, evidence and material on record, which does not suffer from any illegality or error. The appeal has been filed on

misconceived and baseless grounds.

10. The appeal is, accordingly, **dismissed**. No order as to costs.

11. The statutory amount deposited before this Court and any other amount in deposit under any order in this appeal shall be remitted to the concerned tribunal forthwith alongwith Lower Court Record and in any case within a period of four weeks from today to be adjusted towards payment to be made to the claimant-respondents with the amount in deposit before the tribunal, if any, under the orders of this Court.

Order Date :- 12.9.2024

Akanksha Sri.