

Court No. - 21

Case :- FIRST APPEAL FROM ORDER No. - 223 of 2020

Appellant :- Prayagraj City Transport Service Ltd. Thru. M.D.

Respondent :- Jaitun Nisha And Others

Counsel for Appellant :- Anuj Kudesia

Counsel for Respondent :- Romit Seth

Along with

Case :- FIRST APPEAL FROM ORDER No. - 224 of 2020

Appellant :- Prayagraj City Transport Service Ltd. Thru Managing Director

Respondent :- Smt. Sita Gupta And Ors.

Counsel for Appellant :- Anuj Kudesia

Counsel for Respondent :- Abhishek Dhaon, Sankalp Mehrotra

Hon'ble Jaspreet Singh, J.

1. Heard Sri Anuj Kudesia, learned counsel along with Ms. Vani Srivastava, learned counsel for the appellants in both the appeals and Sri Romit Seth, learned counsel who has appeared on behalf of respondent nos. 1, 2 and 3 in F.A.F.O. No. 223 of 2020 and Sri Sankalp Mehrotra, learned counsel who has put in appearance on behalf of respondents in FAFO No. 224 of 2020.

2. The instant two appeals arise from an accident which took place on 27.01.2019 wherein two persons expired. Since the issue in question is common in both the appeals which arise out of the same accident and two separate claims were decided by the Motor Accident Claims Tribunals by award dated 05.08.2020 and 31.07.2020 respectively accordingly, both the appeals are connected and are being decided by this common judgment.

3. Briefly, the facts giving rise to the instant two appeals are being noticed hereinafter first:-

4. On 27.01.2019, one Sri Gauri Shanker Gupta along with his gunner Sri Deepanshu was traveling in a car bearing No. UP 32 G 0422 which was being driven by one Sri Nizamuddin.

5. It is the case of the claimants that Sri Nizamuddin was driving the car cautiously, however, the offending mini bus bearing UP 70 BT 6423 was being driven rashly and negligently and it came on the wrong side of the road and hit the car in question, as a result, the driver of the car Sri Nizamuddin as well as Sri Gauri Shanker Gupta both lost their lives.

6. The heirs of Sri Gauri Shankar Gupta filed their claim petition which was registered as Claim Petition No. 75 of 2019 whereas the heirs of deceased Nizamuddin filed their claim petition which was registered as Claim Petition No. 125 of 2019.

7. In both the claim petitions, the appellants were the main contesting defendants and had raised a two fold plea:- (i) the accident occurred on account of rash and negligent driving of the car bearing No. UP 34 G 0422. It was also urged that the car driver got heavy eyed which caused the accident; (ii) if at all, there was any negligence in so far as the accident is concerned then it was a case of contributory negligence whereas the primary and larger responsibility was that of the car driver.

8. Upon the exchange of pleadings, the Tribunal framed six issues, however, in the instant appeal, it is the issue nos. (i) and (ii) which is engaging the attention and requires re-appreciation in the appeal.

9. The parties led their respective evidence both oral and documentary and thereafter the Claims Tribunal while dealing with issue nos. (i) and (ii) collectively recorded a finding that the accident was caused on account of the rash and negligent driving of the bus driver bearing No. UP 70 BT 6423. It thereafter went on to consider the other issues and also calculated the quantum. In the case relating to the heirs of deceased Nizamuddin, the Tribunal awarded a sum of Rs. 60,47,197/- along with 7% interest in favour of the claimants by means of award dated 05.08.2020 and in the claim petition bearing No. 75 of 2019 which related to the heirs of Sri Gauri Shankar Gupta, a compensation of Rs. 1,54,24,567/- along with 7% interest was awarded by means of award dated 31.07.2020.

10. Being aggrieved, the appellants while assailing the award passed in Claim Petition No. 125 of 2019 filed F.A.F.O. No. 223 of 200 and the appellant also assailed the award passed in Claim Petition No. 75 of 2019 which has given rise to F.A.F.O. No. 224 of 2020.

11. Mr. Anuj Kudesia and Ms. Vani Srivastava, learned counsel for the appellants in both the appeals have vehemently urged that the findings recorded by the Claims Tribunal in so far as the issue nos. (i) and (ii) are concerned, has not properly appreciated the evidence which was available on record.

12. Elaborating their submissions, it is urged that the bus being driven by its driver on its right side but it is only on account of the fault of the driver of the car that the accident occurred. It is

further submitted that Sri deepanshu who was the gunner and sitting in the front seat in the car, in his statement clearly stated that he had seen the bus at a distance of 100 meters. He also admitted that the collision was from the front, in such circumstances, it was apparent that the accident could not have occurred unless the driver of the car was at fault. This aspect has not been appropriately considered by the Tribunal and by fastening the entire liability on the bus driver, the Tribunal has committed an error.

13. It has further been submitted that the quantum has also been granted on the higher side and for the aforesaid reasons, the award requires to be modified by apportioning the liability both on the driver of the bus as well as the car and at least 50% of the liability of the award be apportioned on the driver/owner of the car as it was a collision from the front.

14. It has also been urged by Sri Anuj Kudesia, learned counsel for the appellants that apparently, the impact of the accident was such that the wheels of the bus had unfastened. The thrust of the submission is that the manner in which the accident occurred and admittedly the wheels of the bus were unfastened, it clearly indicates that this could have occurred only with the impact made by the car upon the bus and not vice versa. Thus, it clearly indicates that it was the car driver who was at fault.

15. Sri Romit Seth, learned counsel appearing in F.A.F.O. No. 223 of 2020 on behalf of the claimants/respondents submits that the material available on record including the statement of bus driver clearly indicate that it was his sole fault who had come on the wrong side of the road and hit the car. Even though, if it was a collision from the front yet the manner in which the accident occurred which is apparent from the site plant which has been placed on record, coupled with the fact that the bus driver was apprehended and charge sheeted later, it is a clear case where the driver of the bus was squarely at fault, in such circumstances, the issue of contributory negligence does not arise.

16. It is further submitted that the award has been calculated by the Tribunal in light of the principles enunciated by the Apex Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi 2017 (16) SCC 680*** and thus apparently there is no error which can be found in the award which may warrant an interference of this Court in appeal.

17. Sri Sankalp Mehrotra, learned counsel appearing for the claimants/respondents in in F.A.F.O. No. 224 of 2020 has submitted that in so far as the deceased Sri Gauri Shankar

Gupta is concerned, he was an occupant in the car and in the accident, he expired. As far as Sri Gupta is concerned, for him the issue of contributory negligence is not important, inasmuch, as he still would be covered by the doctrine of composite negligence.

18. Once, the negligence has been established irrespective whether it was the car driver or the bus driver but the heirs of Sri Gupta would receive the compensation either from the owner of the bus or the car, as the case may be.

19. It has alternatively been urged that even otherwise the material and evidence on record clearly indicates that the accident was on account of the rash and negligent driving of the bus driver and in such circumstances including the fact that the award has been calculated in light of the principles laid down by the Apex Court in the case of *Pranay Sethi (supra)*, no interference is required in the present appeal which deserves to be dismissed.

20. Having heard the learned counsel for the parties and upon perusal of the material on record, the sole ground for consideration in the instant appeal before this Court is as to who was responsible for the accident and whether the car driver or the bus driver and in case both are found to be negligent then what would be the apportionment of the negligence upon the two drivers.

21. At the outset, it may be noticed that Sri Deepanshu who was a gunner who was travelling in the car bearing No. UP 34 G 0422 wherein he was sitting along with the driver in the front seat, in his statement, has clearly deposed that the car was travelling at a speed of 50/60 Km. per hour. He further stated that the bus driver was driving the bus bearing No. UP 70 BT 6423 rashly and negligently. He further deposed that he had seen the bus coming from front at a distance of 100 meters and he also stated that it was the negligence of the bus driver which caused the accident.

22. Significantly, the aforesaid statements/depositions of Sri Deepanshu was not seriously challenged, inasmuch as, during his cross-examination, neither any suggestion was put to him nor any adverse statement could be elicited which could have an impact on the veracity and credibility on the said witness.

23. Considering this statement in juxtaposition to the bus driver who stated that may be the car driver was heavy eyed and had taken a nap and he was not aware what caused the accident, however, this was merely a speculation made at the behest of

said witness. He further could not dispute the fact that in so far as the site plan is concerned which was drawn by the police authorities, it clearly indicated that the bus was coming from the side of Prayagraj. The car was coming from the opposite direction as shown and on its correct side i.e. on the left side of the car driver and the bus has been indicated to have wavered and gone on to the right side while hitting the car. This perhaps gives an indication that it was the bus which had come on to the wrong side to hit the car in question.

24. In so far as the submission made by learned counsel for the appellants is concerned that the wheel of the bus was unfastened that could be for any number of reasons. There is nothing in the testimony of the bus driver which could establish that the impact of the car was such that resulted in unfastening of the wheels. There is apparently no contradiction in the statement of the witness which clearly indicated that the bus had wavered and come on the wrong side and hit the car in question which was on its correct side. This was also not disputed nor the accuracy or correctness of the site plan was disputed. Another fact which is not disputed is that the driver was apprehended, he had to take bail and he had been charge sheeted in the proceedings before the Competent Court.

25. It is in the aforesaid backdrop the Tribunal noticed the aforesaid testimony and recorded a finding that it was the sole negligence of the bus driver which caused the accident.

26. This Court in exercise of its appellate power conferred under Section 173 of the Motor Vehicles Act, 1988 finds that there is no error which has been committed by the Tribunal in appreciating the evidence. It is also to be seen that there is unequivocal statement of the witness i.e. Sri Deepanshu who was an eye-witness. As already noticed above, this witness was not cross-examined on the aspect of ascertaining contributory negligence nor any aspect relating to the negligence was put to him in suggestion which could have elicited any response.

27. In this context, the statement of the said witness has been believed by the Tribunal and this does not suffer from any error.

28. On the other hand, the other alleged eye-witness is the bus driver who only gave his speculative statement. Moreover, since he was apprehended and charge sheeted later, his testimony would have to be scrutinized with caution as he apparently is an interested witness and would not make any statement to incriminate himself.

29. Considering the aforesaid aspect, this Court is of the clear

view that the findings recorded by the Tribunal in so far as the issue of contributory negligence is concerned does not suffer from any error.

30. The other issue which has been feebly argued by learned counsel for the appellant is regarding the quantum, however, it could not be pointed out as to how the quantum has been awarded on the higher side and for all the aforesaid reasons, this Court does not find that there is merit in the appeals which accordingly are dismissed.

31. The award passed by the Tribunal dated 05.08.2020 in Claim Petition No. 125 of 2019 which is the subject matter of F.A.F.O. No. 223 of 2000 is affirmed so also the award dated 31st July, 2020 passed in Claim Petition No. 75 of 2019 which is the subject matter of F.A.F.O. No. 224 of 200 is also affirmed. The appeals are sans merit, accordingly dismissed. Costs are made easy.

32. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimants and any remaining amount shall also be deposited before the Tribunal within a period of 60 days from today which shall also be released in favour of the claimants respondents as per the award. The record shall be returned to the Tribunal forthwith.

Order Date :- 14.5.2024

Asheesh