

Reserved on - 18.4.2024

Delivered on - 27.4.2024

Neutral Citation No. - 2024:AHC-LKO:32961

Court No. - 21

Case :- FIRST APPEAL FROM ORDER No. - 743 of 2017

Appellant :- National Insurance Company Ltd. Thru Its Asstt. Manager

Respondent :- Smt. Kusuma And 7 Ors.

Counsel for Appellant :- Mrs. Pooja Arora

Counsel for Respondent :- Alok Kumar Srivastava, P.K. Mishra, Pankaj Kumar Mishra, Pramod Kumar Sharma, Rajendra Jaiswal, Vivek Kumar

Hon'ble Manish Kumar Nigam, J.

1. Heard Ms. Pooja Arora, learned counsel for the appellant - Insurance Company, Shri Alok Kumar Srivastava, learned counsel for respondents No.1 to 6 and Shri Pramod Kumar Sharma, learned counsel for respondent No.8.

2. Perused the record.

3. This appeal has been filed against the award dated 6.7.2017 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.3, Hardoi awarding compensation of Rs.3,65,000/- against the Insurance Company along with interest @ 7% from the date of filing of the petition in Motor Accident Claims Petition No.223 of 2015 (Smt. Kusuma and others vs. Ved Prakash Mishra and others).

4. Brief facts of the case are that one Raghuraj Kashyap died in an accident on 27.11.2014 at about 1 p.m. near Baavan Chungi involving Splendor Motor Cycle No. UP 30 Z-4404, which was being driven rashly and negligently by Ved Prakash Mishra. Raghuraj Kashyap received injuries in the aforesaid accident and subsequently died in the District Hospital, Hardoi. The claim

petition was filed by the wife and children of deceased - Raghuraj Kashyap, which has been allowed by the award dated 6.7.2017, impugned in the present appeal.

5. Learned counsel for the appellant contended that Splendor motor cycle No. UP 30 Z-4404 was not involved in the alleged accident as in the First Information Report, lodged by the son of the deceased on 28.11.2014, number of motor cycle involved was given as UP 30 W-5285. It has been further contended though after investigation, police has submitted the charge-sheet against the motor cycle No. UP 30 Z-4404 but the charge-sheet is not a conclusive prove to hold that accident was caused by motor cycle No. UP 30 Z-4404. In this connection, learned counsel for the appellant has relied upon the Division Bench judgment of this Court in case of **Parashuram Pal and others vs. Ram Laxhan Rajawat and another; 2013 (98) ALR 589** and the judgment of this Court in case of **Shriram General Insurance Co. Ltd. vs. Smt. Hem Lata and Others; 2021 (2) TAC 366 All.**

It has also been contended by learned counsel for the appellant that owner of the motorcycle has not informed the Insurance Company regarding the alleged accident and the death of Raghuraj Kashyap to the Insurance Company and, as such, the Insurance Company cannot be held liable for the claim.

6. Learned counsel appearing for the claimants - respondent Nos.1 to 6 has submitted that claim petition was filed by the claimants with the allegation that the accident occurred because of rash and negligent driving by the splendor motorcycle No. UP 30 Z-4404. It has also been explained in the claim petition itself that FIR which was lodged by the son of deceased, was not the eye-witness of the incident and motorcycle number was given by the persons who were present at the time of accident and,

therefore, in the FIR, motorcycle number was given as UP 30 W-5285. It was subsequently when the eye-witnesses to the accident namely Dilip Kumar and Ram Prakash, who were also examined as witness in the claim petition informed the correct number of motorcycle, the same was mentioned in the claim petition. It has also been contended by learned counsel for the respondents that during investigation, statement of PW3 - Dilip Kumar was recorded by the police and on investigation, it was found that vehicle involved in the accident was UP 30 Z-4404 and not the UP 30 W-5285. The police has submitted charge-sheet against the driver of motorcycle No. UP 30 Z-4404 and, therefore, it cannot be said that vehicle was implanted in order to obtain compensation.

7. Learned counsel appearing for respondent No.8 - motorcycle owner, has supported the submissions made by Insurance Company.

8. The Motor Accident Claims Tribunal framed issue No.1 as to whether on 27.11.2004 at about 1 p.m, motorcycle No. UP 30 Z-4404 was driven rashly and negligently and has caused accident involving Raghuraj Kashyap, who received serious injuries which ultimately led to his death. While considering issue No.1, learned Tribunal has relied upon the statement of PW3 - Dilip Kumar and PW4 - Ram Prakash, who has deposed that they have seen the accident, they have also mentioned the number of motorcycle No. UP 30 Z-4404. It has also come in the statement of eye-witnesses that since the eye-witnesses took the deceased to the hospital, therefore, they could not inform the correct number of motorcycle at the time of lodging of FIR but they subsequently informed the correct number of motorcycle.

9. With the help of learned counsel for the appellant and respondents, I have perused the statements of PW-3 and PW-4

which are at page 66 and 74 of the paper book and could not find any discrepancy in their evidence to disbelieve the same.

10. In my view, Tribunal has not committed any error in relying upon the testimony of PW-3 & PW-4, who were the eye-witness of the incident in recording the finding while deciding issue No.1 that it was motorcycle No. UP 30 Z-4404, which was being driven rashly and negligently by Ved Prakash Mishra at the time of accident.

11. So far as the next submission of learned counsel for the appellant that charge-sheet is not a substantive piece of evidence to fix the liability on the driver of motorcycle No. UP 30 Z-4404 is concerned, I am of the view that Tribunal has recorded the finding on the basis of evidence of PW-3 and PW-4 who were the eye-witnesses of the incident and has thus committed no illegality.

12. In case of **Parashuram Pal (Supra)**, the testimony of eye-witness was disbelieved for the reason given in the aforesaid judgment and, therefore, it was held that charge-sheet is not a substantive piece of evidence to award the compensation only on the basis of charge-sheet. The facts of the case in case of **Parashuram Pal (Supra)** were different and not applicable to the present case. In the present case, the finding has been record on the basis of evidence of the eye-witnesses who were examined by the Insurance Company.

13. In case of **Shriram General Insurance Co. Ltd. (Supra)**, the eye-witness in question was not only the relative of deceased but was also the resident of another village and, therefore, his testimony was disbelieved. In **Shriram General Insurance Co. Ltd. (Supra)**, the brother who was accompanying the deceased at

the time of accident was not examined as witness before the Tribunal and, therefore, the award was set aside by this Court.

14. The facts in the case of **Shriram General Insurance Co. Ltd. (Supra)** are different and, therefore, the aforesaid judgment is not applied to the present case.

15. Lastly, it was contended by learned counsel for the appellant that eye-witness - Dilip Kumar has signed the punchanama. PW-3 - Dilip Kumar in his statement has stated that he has merely signed the punchanama.

16. I have also perused the punchanama from which I do not find anything for which testimony of PW-3 can be doubted. No other point was pressed by learned counsel for the appellant and in view of the discussion made above, I am of the view that the Tribunal has not committed any illegality in allowing the claim petition. Consequently, the appeal fails and is accordingly **dismissed**.

17. Parties will bear the costs.

18. Registry is directed to remit the amount of Rs.25,000/- deposited as statutory deposit by the appellant to the concerned Tribunal, if not already remitted, within a period of three weeks which shall also be paid to the claimants.

Order Date :- 27.4.2024

Rishabh

[Manish Kumar Nigam, J.]