

Court No. - 21

Case :- FIRST APPEAL FROM ORDER No. - 86 of 2022

Appellant :- The New India Assurance Company Ltd. Thru.
Divisional Manager

Respondent :- Shiv Shankar Gupta And Others

Counsel for Appellant :- Asit Srivastava

Counsel for Respondent :- Mukesh Singh, Jai Shrinet

Hon'ble Jaspreet Singh, J.

1. Heard learned counsel for the appellant as well as the learned counsel for the private respondents.
2. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 22.12.2021 passed by the Motor Accident Claims Tribunal, Faizabad (now Ayodhya) in Claim Petition No. 69 of 2017 whereby in a death case, the Tribunal has awarded a sum of Rs. 53,12,708/- along with 7% interest in favour of the claimant-respondent no. 1 only.
3. The submission of learned counsel for the appellant is that apparently the deceased Moolchand Gupa was travelling in a goods vehicle. He being a gratuitous passenger was not entitled to get any compensation from the Insurance Company and at best the amount could have been recovered from the owner of the truck and in it is in this context no liability could have been fastened on the appellant-company.
4. The submission of learned counsel for the claimants-respondents is that the deceased Moolchand Gupta was assigned the task of purchasing metal rods by the department and it is in this context, he had purchased the same and had booked the said metal rods on the truck bearing No. UP 92 T 1640 to be transported from Kanpur to Kushinagar. Thus, he was accompanying the goods in the capacity of the owner/care taker and as such he was covered by the provisions as appended to Section 147 of the Motor Vehicles Act, 1988.
5. It is further submitted that this aspect was placed before the Tribunal which has considered the same and thereafter recorded a finding that the deceased was not a gratuitous passenger rather he fell within the exception as carved out under Section 147 of the M.V. Act, 1988, hence, it was considered that he was entitled to travel with the goods on the truck and thereafter the

compensation has been computed in light of the decision of the Apex Court in Pranay Sethi (supra) and a sum of Rs. 53,12,708/- has been awarded by the award dated 22.12.2021 which does not require any interference from this Court and the appeal is liable to be dismissed.

6. The Court has considered the rival submissions and also perused the material on record.

7. It is the case of the claimants-respondents that Sri Mool Chand Gupta was working with the Irrigation Department and was assigned the task of procuring metal rods and to get the same transported from the Kanpur Project to the Irrigation Department in Kushinagar.

8. It is in this context that the deceased had purchased the metal rods which were loaded on the truck bearing No. UP 32 T 1640 and he was accompanying the said goods on the truck on 29.05.2017. While the said truck was in the process of overtaking another truck, a vehicle came from wrong side and hit the truck, as a result of the said accident, the deceased who was working in the Irrigation Department as a Junior Engineer expired who was about 23 years of age. The respondent no. 1 being the father and Ms. Parvati Devi, the mother of the deceased along with four brothers of the deceased have jointly filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal which was registered as Claim Petition No. 69 of 2017.

9. During the pendency of the claim petition, the mother of the deceased Parwati Devi expired and the matter was considered on the behest of the father of the deceased.

10. The owner and driver of the truck filed their written statement including the Insurance Company who have taken the regular pleas that no liability can be fastened on the Insurance Company unless it is found that all the policy conditions were complied with.

11. Upon the exchange of pleadings, the Tribunal framed five issues.

12. The father of the deceased examined himself as P.W. 1 whereas Praveen Kumar was examined as P.W. 2 who is an eye-witness along with other documentary evidence. No evidence was filed on behalf of the defendants before the Tribunal except the cover note as well as the Insurance Policy and license. Since no oral evidence was led on behalf of the defendants, the claim petition was considered and a finding was recorded that the

accident occurred on account of rash and negligent driving of the truck bearing No. UP 92 T 1640.

13. The Tribunal also recorded that the deceased was a Junior Engineer who was authorized to purchase metal rods which were to be transported from Kanpur to Kushinagar which had been loaded in the offending truck bearing No. UP 92 T 1640 and since the deceased was travelling along with the goods, hence, he was not treated as a gratuitous passenger rather was authorized to travel along with the goods.

14. The finding of rash and negligent driving was recorded based on the evidence led by the claimants including that of the eye-witness and no oral evidence was led to controvert the same and moreover even in the cross-examination of the claimant-witness, nothing could be elicited from their testimony which could have an adverse impact on the right of the claimant.

15. The Tribunal also recorded a finding that the truck was duly insured and its driver had a valid and subsisting license. The Tribunal noticing that the deceased was a Junior Engineer and considering his age, the income as well as his future prospect has awarded a sum of Rs. 53,12,708/- along with 7 % interest in favour of the respondent no. 1, the father of the deceased by means of award dated 22.12.2021 which is under challenge in the instant appeal.

16. The main thrust of the submission of learned counsel for the appellant is that even if the document bearing Paper No. Ga-43 is taken to be as an authorization from the department in favour of the deceased that at best could only indicate that the deceased was authorized to purchase the the said metal rods and get it transported that in itself did not authorize the deceased to be traveling along with the goods booked, thus, in absence of any such clear authorization, the deceased was nothing but a gratuitous passenger and in such a situation it was for the owner and the driver to indemnify the award and the Insurance Company could not have been fastened with the liability of paying the compensation with rights of recovery.

17. In case if the aforesaid submission is tested, it would be found that there was a clear authoization bearing Paper No. Ga-43 which is a demand which permitted the deceased to procure the requisite goods and get it transported. The said documents are not disputed nor any evidence to the contrary was led either by the Insurance Company or by the owner/driver of the offending truck. In absence of any clear evidence led by the Insurance Company and the owner/driver of the truck, the averments made by the claimants remained uncontroverted.

18. Sri Asit Srivastava, learned counsel for the appellant has also urged that as per the policy, it was only the driver, cleaner and such two employees who were required for loading and unloading of goods who were covered in the policy. The aforesaid submission also does not impress the Court, inasmuch as, in terms of Section 147 of the Motor Vehicles Act, 1988, a clear distinction has been carved out which permits the owner/authorized person to travel with the goods, in such circumstances and the material available on record, the conclusion drawn by the Tribunal does not suffer from any error.

19. Once, it was brought on record that the deceased was authorized to purchase the metal rods and take it forward for transporting from Kanpur to Kushinagar, he being an employee of the Department and was travelling along with the goods which were to be transported that in itself amount to authorization. It is not the case of the appellant that the deceased was authorized only for particular route and he was traveling for some other place. It is not disputed that the goods were to be carried on Kanpur to Kushinagar and it is on the same route that the deceased was traveling along with the goods that he was authorized to procure and transport.

20. In light of the aforesaid and in absence of any contrary evidence on record, this Court finds that the conclusion drawn by the Tribunal does not suffer from any error which may persuade this Court to interfere. No other point has been pressed.

21. In view of the aforesaid, this Court does not find that there is any merit in the appeal which is accordingly ***dismissed***. Any amount deposited by the appellant before this Court shall be remitted to the Tribunal to be released in favour of the claimant. Any remaining amount which is to be paid by the Insurance Company shall be paid to the claimant within a period of 60 days from today in terms of the award. The record shall be remitted back to the Tribunal. Costs are made easy.

Order Date :- 15.5.2024

Asheesh