

Court No. - 6

Case :- FIRST APPEAL FROM ORDER No. - 286 of 2021

Appellant :- U.P. State Road Transport Corp. Lko. Thru.
Regional Manager

Respondent :- Manni Lal Kanaujia And Ors.

Counsel for Appellant :- Paavan Awasthi

Counsel for Respondent :- Hari Krishna Srivastava, Ashish
Jain, Vivek Chauhan

Hon'ble Rajnish Kumar, J.

1. Heard Shri Paavan Awasthi, learned counsel for the appellant and Shri Ashish Jain, learned counsel for the claimant-respondent. None appeared on behalf of the respondent no.4, who is driver of the bus of the appellant corporation and a profarma respondent.

2. This F.A.F.O. under Section 173 of the Motor Vehicle Act, 1988 has been filed against the judgment and award dated 10.09.2021 passed in Claim Petition No.898 of 2017 (Manni Lal Kanaujia and Others Vs. Uttar Pradesh State Road Transport Corporation and Another) by Motor Accidents Claims Tribunal (South), Lucknow.

3. The sole argument advanced by learned counsel for the appellant is that the impugned judgment and award has been passed by deciding the issue no.1 in regard to the accident, only recording the evidence of the witnesses, but without recording any finding after considering them and material on record as to how the accident is proved and the reasons for coming to the conclusion to prove the accident, therefore the impugned judgment and award is not sustainable in the eyes of law and liable to be set-aside by this Court. He relies on judgment and order passed by this Court on 14.10.2020 in the case of **Smt.**

Reeta Singh Vs. State of U.P. and Others; Misc. Single No.2406 of 2017.

4. Per contra, learned counsel for the respondent vehemently argued that learned tribunal has recorded findings after considering the evidence of the respective parties and the appellant has failed to prove that the accident had not occurred. The learned tribunal has rightly recorded the finding that the accident had been proved by the claimant-respondent and thereafter the findings in regard to other issues, therefore the contention of the learned counsel for the appellant is misconceived and not tenable. He further submits that the judgment relied by the learned counsel for the appellant is for a case specific and the same is not applicable in the facts and circumstances of the present case. Thus, the submission is that the impugned judgment and award has been passed in accordance with law, recording the reasons. The appeal has been filed on misconceived and baseless ground, which 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 by the claimant-respondent with allegation that the claimant-respondent no.1 alongwith his wife and daughter was going by Aactiva scooter being Registration No.U.P.-32-HP-5127 on 06.11.2017 from Shanti Nagar to Sarojni Nagar. At about 04:30 in the evening near Nadarganj crossing, the bus No.U.P.-42-AT-5707 of Sultanpur Depot came from the back side and its driver driving the bus rashly and negligently hit the scooter, in which his wife Neelu got serious injuries and she died while she was taken to hospital. She was making food and doing press work in the house of others and earning Rs.10,000/- per month. Accordingly the compensation

was claimed.

7. The claim petition was contested by the appellant by filing a written statement denying the averments made in the claim petition and stating that no accident had occurred on 06.11.2017 by bus in question. The accident had occurred between motor cycle and scooty and on account of their contributory negligence, which was at a distance from the vehicle of the appellant corporation. The vehicle was being driven by the driver carefully, therefore the claim petition is liable to be dismissed.

8. The driver of the vehicle of the appellant corporation also filed and denied most of averments made in claim petition stating that no accident had occurred from his bus. He further stated that the accident had occurred on account of contributory negligence of motor cycle and scooty. The driver had stopped the bus sympathetically and after some time he had left the spot. Accordingly he prayed for dismissal of the claim petition.

9. After exchange of pleadings, four issues were framed by the tribunal. Thereafter documentary and oral evidence was adduced by the parties. In oral evidence three witnesses were produced by the claimant-respondent and two by the appellant.

10. Learned tribunal while deciding issue no.1 in regard to the accident, recorded the statement on oath given by all the three witnesses of claimant-respondents and two defence witnesses in evidence and thereafter recorded that "याचीगण द्वारा दुर्घटना को अभिलेखीय व मौखिक साक्ष्य से सिद्ध किया गया है।" This finding has been recorded without recording any reason as to how tribunal came to the conclusion on appreciation of evidence of parties, pleadings and material on record that the accident has been proved by the claimant-respondents.

11. It is also noticed that the tribunal has considered a report in the case of **Radha Vs. Ashok Kumar; 1989 3 ACC 379 (Allahabad)** and also reproduced the observation made in the said, according to which the tribunal is required in law to give its finding on probabilities and not on proving the offence beyond reasonable doubt as done by a criminal court but even then failed to record the findings and reasons, for arriving at a conclusion that the accident has been proved.

12. This court, considered the issue in the case of **Smt. Reeta Singh Vs. State of U.P. and Others (Supra)**. The relevant paragraphs 10 to 13 are extracted here-in-below:-

"10. It is settled proposition of law that when an explanation is called and explanation is submitted raising certain pleas, the same is liable to be considered by the concerned authority before passing the order and recording a finding is must which may indicate the application of mind of the concerned authority and as to how he had come to conclusion but no such finding or reasons have been recorded by the opposite party no.3.

11. On being challenged in appeal, the appellate authority has also not recorded any finding in regard to the pleas raised by the petitioner and without recording any finding the appellate authority observed that the case law relied by the learned counsel for the petitioner is not applicable. The appellate authority also went a step ahead in recording a finding that the petitioner had not submitted the documents required by the concerned authority while no such finding was recorded by the opposite party no.3. The appellate authority could have recorded such finding but only after verifying from the records and in such a situation the appellate authority should have recorded a finding as to what documents were submitted by the petitioner.

12. This Court considered the issue in the case of Raj Kumar Vs. State of U.P. and Other (Supra), the relevant portion of which is extracted below:-

"From the perusal of the reasoning given by the licensing authority/opposite party no.3 while cancelling the petitioner's licence of fair price shop, it is clearly established that the said order is non speaking and reasoned order and no reason whatsoever has been assigned by the said authority that on what ground, he was disagreed with the reply submitted by the petitioner to the show cause notice dated 29.06.2012 by which five charges levelled against him.

In Breen Vs. Amalgamated Engg. Union, reported in 1971(1) AIER 1148, it was held that the giving of reasons is one of the fundamentals of good administration. In Alexander Machinery (Dudley) Ltd.Vs. Crabtree, reported in 1974(4) IRC 120 (NIRC) it was observed that "failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at".

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out. The inscrutable

face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

Further, as far as late in the year 1970 Hon'ble the Apex Court in the case of Mahabir Prasad Santosh Kumar Vs. State of U.P. and otehrs, AIR 1970 SC 1302, held that such an order cancellation is quasi-judicial and must be a speaking one and supported by a reason and if a reason is caprice one, the same is in violation of principles of natural justice and the same is liable to be set aside.

The said view was further reiterated by Hon'ble the Supreme Court in the case of Union of India Vs. Mohan Lal Capoor and others, AIR 1974 SC 87, further in the case of Shri Swamiji of Shri Admar Mutt etc. etc. Vs. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors. AIR 1980 SC 1, Hon'ble the Apex Court in the judgment referring Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as "Ces-sante Ratione Legis Cessate Ipsa Lex" held that "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself" (See. also M/s. Bombay Oil Industries Pvt. Ltd. Vs. Union of India and Others, AIR 1984 SC 160).

In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. KS. Gandhi and Others, (1991) 2 SCC 716, Ho'ble the Apex Court held that if no reason is recorded in the impugned order, the same is violative of principles of natural justice."

13. In view of above, this Court is of the considered opinion that the impugned orders have been passed without considering the objections raised by the petitioner as well as the grounds raised in the appeal, therefore the same are non reasoned and non speaking and without application of mind hence not sustainable in the eyes of law and are liable to be quashed with a direction to the opposite party no.3 to consider and pass a fresh order in accordance with law."

13. In view of above, it is settled proposition of law that failure to give reasons amounts to denial of justice and reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. The reasons substitute subjectivity by objectivity and if no reasons are recorded in the impugned order, the same is violative of principles of natural justice. The contention of learned counsel for the respondent that the issue decided in the aforesaid case is case specific is misconceived and not tenable.

14. This Court is of the view that learned tribunal has passed the impugned judgment and award in flagrant violation of principles of natural justice without recording any reason and findings for arriving at a conclusion of the accident and rash and negligent driving of the offending vehicle, therefore the impugned judgment and award is not sustainable in the eyes of law, which is liable to be set-aside with direction to the tribunal to decide the claim petition a fresh in accordance with law and observations made herein above in this order.

15. The appeal is, accordingly, **allowed**. The impugned

judgment and award dated 10.09.2021 passed in Claim Petition No.898 of 2017 (Manni Lal Kanaujia and Others Vs. Uttar Pradesh State Road Transport Corporation and Another) passed by Motor Accident Claims Tribunal (South) Lucknow is hereby set-aside. The learned tribunal is directed to pass a fresh order in accordance with law and the observations made herein above in this order expeditiously and preferably within a period of three months from the date of production of certified copy of this order without granting unnecessary adjournment to either of the parties.

16. Learned counsel for the parties submit that some date may be fixed to appear before the tribunal.

17. With the consent of learned counsel for the parties, it is provided that the parties shall appear before the tribunal on 15.10.2024.

18. The lower court record shall be remitted to the concerned tribunal expeditiously and in any case within a period of two weeks from today, so that it may be available with the tribunal on 15.10.2024.

(Rajnish Kumar, J.)

Order Date :- 23.9.2024

Haseen U.