

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 399 of 2024

Appellant :- The New India Assurance Co. Ltd., Lucknow
Thru. Assistant Manager

Respondent :- Smt. Sita Devi And Others

Counsel for Appellant :- Waquar Hashim

Counsel for Respondent :- Ravindra Pratap Singh

Hon'ble Rajnish Kumar,J.

1. Heard Shri Waquar Hashim, learned counsel for the appellant and Shri Ravindra Pratap Singh, learned counsel for the claimant-respondent nos.1 to 6.

2. Learned counsel for the appellant, while assailing the judgment and award dated 22.02.2024/ 23.02.2024 passed in M.A.C.P. No.363 of 2018 (Smt. Sita Devi and Others Vs. The New India Assurance Co. Ltd. and Others) by Motor Accident Claims Tribunal, Barabanki, submits that admittedly the accident had occurred on account of collision of three vehicles, therefore, the sole liability could not have been fastened on the vehicle insured by the appellant. He further submits that the claimant-respondent no.1 had given a statement in writing to the investigator of the appellant-insurance company that the deceased was sitting in one of the vehicles i.e. Tata Magic, which was not denied but the learned tribunal failed to consider the same. He further submits that the accident had been found proved only on the evidence of an interested witness i.e. the driver of the Tata Magic No.UP-41-T-9483 involved in the accident, whereas it could not have been relied. Learned counsel for the appellant further submits that the interest could not have been awarded on the future prospects. Thus, the impugned judgment and award is not sustainable.

3. Per contra, learned counsel for the claimant-respondent nos.1 to 6 submits that the accident had occurred on account of rash and negligent driving of driver of the offending Truck No.UP-41-AT-4187, which was insured by the appellant-insurance company, therefore, the liability can not be denied and plea of contributory negligence could not be proved before the tribunal by the appellant. He further submits that the investigator report could not have been relied and it has rightly been rejected because the alleged statement of the claimant-respondent no.1 was denied by the claimant-respondent no.1 and the investigator report was also not proved by adducing any

cogent evidence. He further submits that the interest has rightly been allowed on future prospects also. Thus, the submission is that the learned tribunal has rightly and in accordance with law allowed the claim petition and there is no illegality or error in it.

4. Having considered the submissions of learned counsel for the parties, I have perused the record.

5. As alleged in the claim petition while the deceased i.e. the husband of the claimant-respondent no.1 and father of the claimant-respondent nos.2 to 6 was standing near Rani Bazaar crossing for going on his duty, the Truck No.UP-41-AT-4187, coming from the side of Barabanki hit the DCM Truck No.UP-33-AT-3371, driving the truck rashly and negligently with a high speed on account of which it dashed into the Tata Magic No.UP-41-T-9483 and deceased Udai Pratap Singh standing there, in which the deceased died on the spot. The learned tribunal, after considering the evidence adduced in regard to the accident and the evidence of the eye witness PW-2 Ajai Kumar Singh, recorded a finding that the accident had occurred on account of rash and negligent driving of the offending Truck No.UP-41-AT-4187. PW-2 has stated in his evidence that he was the driver of Tata Magic No.UP-41-AT-4879 and after parking his vehicle, he was standing and drinking tea on a tea shop near place of accident. Thus, the contention of learned counsel for the appellant that PW-2 was the driver of one of the vehicles involved in the accident is totally misconceived and not tenable and accordingly rejected. The PW-2 proved the accident and nothing could be extracted by the appellant-insurance company in cross-examination or any contrary evidence could be produced, which may create any doubt about the veracity of the evidence of PW-2 and that he has not seen the accident. He has also specifically deposed that the deceased was not sitting in the Tata Magic. The learned tribunal has recorded a finding that the evidence of PW-2 has been corroborated by the documentary evidence filed by the claimant-respondents.

6. In regard to the plea of the report of the investigator, the tribunal has recorded a finding that the statement of claimant-respondent no.1 Sita Devi has been denied by her, which was not supported by any affidavit also. The appellant-insurance company has also not produced any evidence to prove the investigator report i.e. Ga-47. Thus, the investigator report could not have been relied without proof.

7. The learned tribunal has also recorded a finding, after considering the evidence of the parties, that there was no contributory negligence of the other vehicles because the

offending truck had dashed the truck coming from the other side after going on the right side of the road, on account of which back side of the truck had hit the Tata Magic and the deceased, in which the deceased died. No contrary evidence or material could be shown by learned counsel for the appellant.

8. The contention of learned counsel for the appellant in regard to the interest on the future prospect is misconceived and not tenable as the same is one of the components of compensation awarded under the Motor Vehicles Act, 1988 as per law and the constitution bench judgment of Hon'ble Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sheti and Others; (2017) 16 SCC 680** and accrues on the date of accident but not paid by the insurance company, therefore, the contention is misconceived and not tenable as held by this Court in the case of **Uttar Pradesh State Road Transport Corp. Lko. Thru R.M. Vs. Bhavani Prasad Manjhi; F.A.F.O. No.42 of 2016**, by means of judgment and order dated 09.12.2024 after considering the relevant provisions and several judgments. The paragraphs- 36 and 37 are extracted here-in-below:-

"36. The Hon'ble Supreme Court, in the case Union of India Vs. Rina Devi; (2019) 3 SCC 572, considered the issue of interest on the compensation in case of untowered incident under the Railways Act. However, held that legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988 and conflicting views stand resolved in this manner. It has been held in this case that the law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Thus, the Hon'ble Supreme Court concluded that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases.

37. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the contention of the learned counsel for the appellant is misconceived and not tenable and this Court is of the view that the claimant-respondent is entitled for the future prospects and interest thereon also."

9. In view of above, this Court does not find any illegality or error in the findings recorded by the tribunal, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

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

11. The statutory amount deposited by the appellant before this Court shall be remitted to the concerned tribunal forthwith and in any case within a period of ten days from today, which may be adjusted towards payments to be made to the claimant-respondents under impugned judgment and award dated 22.02.2024/ 23.02.2024 passed in M.A.C.P. No.363 of 2018 (Smt. Sita Devi and Others Vs. The New India Assurance Co. Ltd. and Others) by Motor Accident Claims Tribunal, Barabanki.

(Rajnish Kumar, J.)

Order Date :- 10.12.2024
Haseen U.