

(2009) 11 AHC CK 0169

In the Allahabad High Court

Case No : First Appeal From Order No. 907 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

Jokhu Singh and others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 11 AHC CK 0169

Hon'ble Judges : V.K.Shukla, J and Rajiv Sharma, J

Final Decision : Dismissed

Judgement

1. National Insurance Co. Ltd. has filed present appeal questioning the validity of award dated 13.09.2005, whereby claim petition preferred on behalf of the claimants has been allowed with interest at the rate of 6% per annum.

2. Brief background of the case is that on 02.01.2003 at 10 A.M. Dabloo Singh along with his relative Ranjit Singh riding on Hero Hoonda Motor Cycle was going towards Sahadatganj, Faizabad, and on the main road near Sahadatganj Bypass just in front of Shiv Nagar Colony, on account of rash and negligent driving of Truck No. U.P. 53 L9507, the aforesaid Motor Cycle was dashed, and in the said accident both Dabloo Singh and Ranjit Singh had died. F.I.R. of the said incident was lodged by Hem Nath Singh and the post mortem was conducted. The claimants with a view to claim compensation filed claim petition, which was contested by defendant No. 1 by contending that the claimants were not legal representatives of the deceased and as this was a case of collusion in between the two vehicles, as such Motor Cycle in question was also liable to be impleaded as party, and further the deceased had no valid driving license, and alternatively, it was also mentioned that truck driver had also no valid license. Defendant Nos. 2 and 3 filed their written statement denying the accident itself.

3. On the basis of the pleadings of the parties, in all, 6 issues were framed. From the side of claimants P.W.1 Jokhu Singh, P.W. 2, Hemnath Singh and P.W.3 Amarbahadur Singh were examined, and documentary evidence was also filed.

From the side of defendants Taiyab Ali, D.W.1 was examined and documentary evidence was also filed. Thereafter, Motor Accident Claims Tribunal recorded finding that the Truck in question was being rashly and negligently driven, and the award in question has been given, against which present First Appeal From Order has been filed.

4. Learned counsel for the appellant contended with vehemence that in the present case there was contributory negligence on the part of the deceased Dabloo Singh in the alleged accident, as such without there being any objective consideration, award in question could not have been passed, as has been done in the present case, and in this background, the award is liable to be set aside.

5. Countering the said submission from the side of respondents, it has been contended that on the basis of appreciation of evidence available on record, rightful finding has been returned, and taking into consideration the rash and negligent driving of the truck by its driver, adequate compensation has been awarded, as such present appeal deserves to be dismissed.

6. In the present case, Motor Accident Claims Tribunal while adjudicating issue No. 1 has considered the statement of P.W.1 Jokhu Singh, and clearly inferred that the accident in question had taken place from the offending vehicle and further the statement of P.W. 3 Amar Bahadur Singh establishes that the accident had taken place on account of rash and negligent driving of the truck by its driver. The statement of the driver of the vehicle has also been examined and the factum of filing of charge sheet in criminal case has also been taken into consideration. Once there was no cogent evidence available on record that there was contributory negligence on the part of the deceased also in the happening of the accident, in any manner, whatsoever, then by no stretch of imagination any liability on the contributory negligent front could have been fastened, as has been requested. Fact of the matter is that after proper appreciation of evidence on record, finding of fact has been returned qua rash and negligent driving by the driver of offending truck in question, and thereafter, adequate compensation has been awarded. There is no merit in the appeal.

7. Consequently, the present First Appeal From Order is dismissed.