

ITEM NO.32

COURT NO.6

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).28080/2008

(From the judgement and order dated 25/07/2008 in FAFO
No.3586/2007 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

RAKESH KUMAR TIWARI Petitioner(s)
VERSUS
NARENDRA KUMAR YADAV & ORS. Respondent(s)

(With appln(s) for interim Relief)

Date: 10/02/2012 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.Ashutosh Lal, Adv.
Dr. Kailash Chand,Adv.

For Respondent(s) Mr. Pramod Dayal,A.O.R.(Not Present)

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against judgment dated 25.07.2008 of the Division Bench of the Allahabad High Court whereby the appeal preferred by the petitioner against award dated 30.04.2007 passed by Motor Accident Claims Tribunal, Kanpur Nagar (for short, 'the Tribunal') in M.A.Suit No.148 of 2005 was dismissed.

In an accident which occurred on 16.1.2005, Smt. Kiran Yadav (wife of respondent No.1 and mother of respondent Nos.2 and 3) died when the motorcycle on which she was going with her husband was hit by the vehicle belonging to the petitioner.

Respondent Nos.1 to 3 filed petition under Section 166
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of the Motor Vehicles Act for award of compensation. Respondent

No.4 - insurance company contested the claim mainly on the ground that on the date of the accident, the driver of the vehicle did not have valid driving licence.

On the pleadings of the parties, the Tribunal framed the following issues:

"1. Whether the accident was happened on dated 16.01.2005 at about 10.00 O'Clock on Hamirpur Road near to Dhobin Pulia in Police Station

Naubasta jurisdiction? If yes, then Smt. Kiran Yadav died in this accident due cause of the greivous injuries?

2.Whether the accident was happened to driven by the driver of U.P.78B/8518 the claimant No.1 to drive rash and negligent and claimant No.1 is also a guilty of contributory negligence?

3.Whether the Truck driver was having a valid and effective driving licence on the date of accident?

4.Whether the claimants have any right to get the compensation if yes, then how much and from which party?

5.Whether the claimants have any right to take any other relief?"

After considering the pleadings of the parties and evidence produced by them, the Tribunal returned the finding that the accident was caused due to rash and negligent driving of the vehicle belonging to the petitioner and that on the date of accident i.e. 16.01.2005, the driver of the vehicle did not have a valid driving licence.

The Division Bench of the High Court agreed with the Tribunal that on the date of accident, the driver did not have any valid driving licence and renewal thereof with effect from 18.01.2005 cannot absolve the petitioner of his liability to compensate the claimants.

During the pendency of the special leave petition, the petitioner filed I.A.No.3 of 2011 and filed additional affidavit along with xerox copy of papers purporting to be an application made by the driver of the vehicle on 06.12.2004 for renewal of licence.

In the context of the additional documents, we enquired from the learned counsel whether these documents were tendered in evidence before the Tribunal. To this, learned counsel could not give satisfactory reply.

From the material on record, we find that the petitioner had not produced before the Tribunal copy of the application dated 06.12.2004 allegedly made by the driver of the vehicle for renewal of licence. Not only this, he did not summon the licencing authority along with the relevant records to prove

that the driver of the offending vehicle had, in fact, made an application within 30 days of the expiry of the licence.

Before

this Court also, the petitioner did not file any application under Order 47 Rule 1 for taking on record additional evidence.

Therefore, the documents filed with I.A.No.3/2011 cannot be relied upon for setting aside the concurrent finding recorded by the Tribunal and the High Court that the driver of the offending vehicle did not have valid driving licence on the date of accident and the renewal of licence w.e.f.18.1.2005.

In the result, the special leave petition is dismissed.

(Satish K. Yadav)
Court Master

(Phoolan Wati Arora)
Court Master