
(2007) 03 AHC CK 0106
In the Allahabad High Court

Abha Rani Agrawal and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2007) ACJ 1555 : (2007) 4 ADJ 183

Hon'ble Judges : Pankaj Mithal, J; Jagdish Bhalla, J

Bench : Division Bench

Judgement

Pankaj Mithal, J.—One Subodh Kumar Agrawal was knocked down to death by a negligently driven truck. The truck was insured with New India Assurance Co. Ltd. The dependants of the deceased, i.e., his widow Abha Rani, two minor children and parents joined together to file a claim petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 6,50,000. According to them the deceased aged about 28 years was working as an Assistant Manager in Vikas Food Products, Agra and was drawing a salary of Rs. 2,500 per month.

2. The claim was opposed by the respondents on the ground that the deceased himself was negligent in riding a moped and, therefore, neither the owner of the truck nor New India Assurance Co. Ltd. were liable for payment of compensation. The factum of the deceased being employed as Assistant Manager in Vikas Food Products, Agra was also denied. New India Assurance Co. Ltd. by filing a separate written statement further alleged that the truck driver was not having a proper driving licence and, therefore, the insurance company is not liable for the payment of any compensation.

3. Motor Accidents Claims Tribunal vide the impugned judgment, order and award dated 29.3.1993 held that the accident took place due to negligence of the truck driver alone. Tribunal awarded a sum of Rs. 2,04,000 to claimants-appellants by taking Rs. 15,000 as the notional income of the deceased in view of Second Schedule of the Act by applying the multiplier of 18.

4. Not being satisfied by the compensation awarded by the Claims Tribunal, the claimants-appellants have preferred this appeal for enhancement.

5. We have heard Mr. Ashok Nath Tripathi, learned Counsel for appellants, Mr. P.K. Bisaria for New India Assurance Co. Ltd., respondent No. 1 and have perused the record. The only point raised and which arises for determination is about the quantum of income of the deceased on the basis of which the compensation has to be determined. There is no dispute with regard to the multiplier of 18 being applied looking to 28 years of age of the deceased at the time of his death.

6. The widow of the deceased claimant-appellant No. 1 appeared as PW 1 and categorically stated that her husband was working as Assistant Manager in the Vikas Food Products, Agra and was drawing a salary of Rs. 2,500 per month out of which he used to spend about Rs. 200 to Rs. 300 per month on himself and the rest of the amount was always given to her for being spent upon the dependants. The claimants-appellants in order to prove that deceased was employed as Assistant Manager in the Vikas Food Products, Agra and was drawing a salary of Rs. 2,500 per month has produced the original salary certificate of the deceased, paper No. 24 "Ga", issued by the proprietor of the firm Rukmani Devi. The salary certificate was proved by Vishnu Kumar, PW 2, husband of the proprietor of the firm Rukmani Devi. He stated that though the business of the firm is in the name of his wife but actually he himself used to run and manage the same. He stated that the deceased was getting salary of Rs. 2,500 per month and the salary certificate on record bears the signature of his wife. The Claims Tribunal in view of the fact that the proprietor of the firm had herself not appeared as a witness to prove the salary certificate, took the view that the claimants-appellants were not able to prove the income of the deceased to be Rs. 2,500 per month and, therefore, took Rs. 15,000 as the notional income for the purpose of determining the compensation. The Claims Tribunal, however, recorded a categorical finding that it has been proved beyond reasonable doubt that the income of the deceased was more than Rs. 15,000 per annum.

7. The perusal of the record reveals that the deceased was actually working and was having independent income prior to the accident. Claims Tribunal itself has recorded a finding that the income of the deceased was not less than Rs. 15,000 per annum in any case. However, the Tribunal took Rs. 15,000 per annum as the notional income of the deceased as per Second Schedule of the Act for the purposes of determining the compensation payable. The Tribunal committed an error of law in determining compensation on the basis of notional income. The notional income as per Second Schedule of the Act is applicable only in cases of non-earning members, i.e., where it is proved beyond doubt that the deceased was not doing anything and was not earning or had no income prior to the accident. The provision of notional income as contained in Second Schedule of the Act is not applicable where the finding is that the deceased was having

income at the time of accident.

8. Now the evidence on record sufficiently proves that deceased was drawing a salary of Rs. 2,500 per month from the firm Vikas Food Products, Agra. The original salary certificate, paper No. 24 "Ga" issued by the proprietor of the firm proves the same. The genuineness or authenticity of the said certificate has not been disputed. What has been disputed is only the factum of employment. The said certificate has been proved by Vishnu Kumar, PW 2. Since the genuineness of the said salary certificate was not disputed, it was not necessary for the proprietor of the firm who happened to be a housewife to appear in the witness-box to prove the same. In the facts and circumstances where the evidence has come that the business of the said firm was actually being run and carried by the husband of the proprietor, i.e., Vishnu Kumar, PW 2, the said salary certificate has rightly been proved by the PW 2. The provisions of the Act providing for compensation is in the form of a welfare and social legislation and the object is to benefit the family in distress. The salary certificate aforesaid and the oral evidence approves that the deceased was having an income of Rs. 2,500 per month. Accordingly, we hold that the Tribunal committed material irregularity in not accepting the salary of the deceased to be Rs. 2,500 per month.

9. According to the above salary of the deceased, his annual income at the time of the accident happens to be Rs. 30,000 (i.e., Rs. 2,500 x 12). Out of the aforesaid annual income after making deduction for personal expenses of the deceased, actual dependency of the claimants-appellants is required to be worked out. There is no rigid rule or formula providing for the percentage of the deduction to be made towards personal expenditure. It is unbelievable that the deceased was only spending about Rs. 200 to Rs. 300 per month on his personal needs. There is no other evidence about the income which the deceased was spending upon himself. Therefore, under the facts and circumstances it would be appropriate that 1/3rd of the salary be deducted from his total income for his personal expenditure for calculating the actual dependency. Accordingly, the dependency of the claimants-appellants is worked out to be Rs. 20,000 (Rs. 30,000 minus 1/3rd of Rs. 30,000, i.e., Rs. 10,000).

10. Applying the multiplier of 18 to the above annual dependency of Rs. 20,000 the compensation comes to Rs. 3,60,000 (Rs. 20,000 x 18).

11. The Tribunal after determining the compensation reduced it by 25 per cent on account of lump sum payment. This is not correct. In calculating the compensation neither the future prospects or increase in salary nor inflation or decline in the value of rupees has been taken into account. Non-consideration of these aspects counter balances the deduction on account of lump sum payment. Therefore, on principle no deduction is liable to be made on account of lump sum payment.

12. The claimants-appellants are entitled to general expenses of Rs. 10,000 over and above the aforesaid amount has been awarded by the Tribunal. Therefore,

total compensation payable to the claimants-appellants is Rs. 3,70,000.

13. The appeal is allowed in part and the claimants-appellants are awarded a sum of Rs. 3,70,000 as aforesaid along with simple interest at the rate of 10 per cent per annum from the date of filing of the petition as against New India Assurance Co. Ltd., respondent No. 1. No order as to costs.