

(2013) 04 AHC CK 0045

In the Allahabad High Court

Case No : F.A.F.O. Nos. 103 of 2005 and 873 of 2006

Amit Kumar Singh and Others

APPELLANT

Vs

Dharmendra Sharma and Others

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 4 ACC 639

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Neither learned Counsel for the owner of the vehicle (appellant of F.A.F.O. No. 873 of 2006) is present nor there is any request for passing over or adjournment of the case. Since the common question of facts and law is involved in both the above mentioned appeals, as such, with the consent of Mr. A.F. Singh, learned Counsel for the claimants and Mr. U.P.S. Kushwaha, learned Counsel for the New India Insurance Company, we proceed to hear and decide the above appeals by a common order.

2. Heard Mr. A.P. Singh, learned Counsel for the claimants and Mr. U.P.S. Kushwaha, learned Counsel for the New India Insurance Company Ltd.

3. In both the abovementioned appeals u/s 173 of the Motor Vehicles Act, 1988, the judgment and award dated 19th January, 2005 passed by the Motor Vehicles Accident Claims Tribunal/Additional District Judge, Ambedkar Nagar, in Claim Petition No. 4 of 2000 has been challenged.

4. F.A.F.O. No. 103 of 2005 has been filed on behalf of the claimants for enhancement of the compensation, whereas F.A.F.O. No. 873 of 2006 has been filed on behalf of owner of the vehicle, namely, Dharmendra Sharma.

5. Shorn off unnecessary details the facts of the case are that on 26th November, 1999, Raj Bahadur Singh was going with motor cycle, bearing registration No.

U.P.-X-5193, to meet his son Amit Kumar Singh, who was studying at K.N.I. Sultanpur and when he reached Basthan Sultanpur-Akbarpur Road near village Bhikhupur, at about 6.15 a.m., driver of the truck, bearing registration No. U.P. 78-N-3985, while driving rashly and negligently, dashed the motor cycle, as a consequence thereof, motor cycle was smithereens and Raj Bahadur Singh died on spot.

6. In order to get compensation, the claimants, being legal heirs of deceased Raj Bahadur, preferred a claim petition, bearing No. 4 of 2000, before the Motor Accident Claims Tribunal. In the written statement filed on behalf of the owner of the vehicle, namely, Dharmendra Singh and driver of the vehicle, it was pleaded that deceased was not earning Rs. 9,000 per month; the accident did not occur due to rash and negligent driving by driver of the truck but it occurred due to rash and negligent driving of the deceased; and at the time of accident, truck in question was insured with New India Insurance Company Ltd. In the written statement filed on behalf of Insurance Company, it was pleaded that neither any accident occurred on 26th November, 1999 nor any injuries were caused due to the accident; at the time of accident, the deceased was not aged about 45 years and was not working at Mahatma Algoodas Vidya Mandir as Principal; the said accident occurred due to rash and negligent driving of the deceased; there was no fault on the part of the truck driver; at the time of accident, driver of the vehicle was not having valid licence.

7. On the basis of the pleadings, the Tribunal had framed following eight issues:

1. Whether on 26th November, 1999, at 6.15 a.m., driver of Vehicle No. U.P. 78 N 3985 dashed Raj Bahadur Singh and injured him at Sultanpur-Akbarpur Road, near Village Bhikhupur, as a consequence whereof, severe injuries were caused to him because of which he died?

2. Whether at the time of accident, driver of vehicle No. U.P. 78 N-3985 drove the vehicle rashly and negligently at Sultanpur-Akbarpur Road? If yes, what is the effect?

3. Whether claimants are entitled to get compensation of Rs. 26 lakh?, if yes, then how much and from whom?

4. Whether at the time of the accident, vehicle in question was insured?. If yes, what is the effect?

5. Whether at the time of accident, driver of vehicle was having valid and effective licence? If no, then what is the effect?

6. Remedy?

7. Whether claim petition is defective for want of impleading necessary parties?

8. Whether the accident was occurred due to rash and negligent driving of the deceased by Motor Cycle No. U.P.X 5193?

8. On analyzing the evidence on record, the Tribunal had decided issue Nos. 1,2,8 in favour of the claimants by recording a findings that either of the parties had not examined any eye-witness and as such, on perusal of the evidence, it appears that accident occurred on the date was beyond doubt and further respondents have not produced the driver of the vehicle, who was the only witness to the fact if the deceased was driving the vehicle rashly and negligently, therefore, because of lack of evidence issue No. 8 was decided against the respondents. While deciding issue Nos. 4 and 5, which related to insurance of the truck in question and valid driving licence on the date of accident, the Tribunal came to the conclusion that no documentary evidence was filed with respect to insurance of the truck in question and valid driving licence on the date of accident and as such, on account of non-availability of sufficient evidence, issue Nos. 4 and 5 were decided against respondent Nos. 1 and 2. While deciding issue No. 7, the Tribunal has recorded a finding that since either of the parties have not pressed this issue and as such, this issue was decided against the respondents. While deciding issue Nos. 3 and 6, which related to the compensation, the Tribunal has recorded findings that as per High School Certificate, date of birth of the deceased was 3rd November, 1954 and accident was occurred on 26th November, 1999 and as such, at the time of the accident, deceased was aged about 45 years 23 days. Therefore, in view of Second Schedule of the Act, multiplier of "13" would be applicable. The Tribunal has also recorded a finding that in spite of sufficient time being granted to the claimants, they had not produced any evidence, which shows that at the time of accident, deceased earned Rs. 9,000 per month and further on the evidence available on record, it came out that no certificate was filed which showed that deceased had worked as Teacher after 1994 and the last document, which related to payment of salary to the deceased, was in the month of July, 1990, according to which, monthly salary of the deceased was Rs. 2,296.80. Therefore, on non-availability of evidence with regard to monthly income of the deceased at the time of accident, the Tribunal has fixed the monthly income of the deceased as Rs. 3,000 per month at the time of accident. Accordingly, Rs. 3,20,000 was awarded as compensation to the claimants. Feeling aggrieved, claimants have preferred F.A.F.O. No. 103 of 2005 for enhancement of the compensation and owner of the vehicle, Dharmendra Sharma has preferred F.A.F.O. No. 873 of 2006.

9. Mr. U.P.S. Kushwaha, learned Counsel for the New India Insurance Company has submitted that during the pendency of F. A.F.O. No. 873 of 2006, claimant No. 1/respondent No. 1 Smt. Kalawati and claimant No. 7/respondent No. 7-Narsingh Narain Singh died as would be evident from the perusal of CM. Application No. 49613 of 2012 (W) in re: F.A.F.O. No. 103 of 2005 but appellant of F.A.F.O. No. 873 of 2006 has neither made any effort to bring into the notice of the Court about the said facts nor any application to the same has been moved. Therefore, F.A.F.O. No. 873 of 2006 is liable to be dismissed.

10. Mr. A.P. Singh, learned Counsel for the claimants/appellants submits that though a certificate related to the income of the deceased duly signed by the

Principal of the College, where the deceased was posted, was produced by the claimants, which disclosed that the monthly salary of the deceased at the time of accident was Rs. 9,000 but the Tribunal did not rely on this certificate and regularization orders on the post of Principal of the College and the Tribunal erred in assessing the income of the deceased as Rs. 3,000.

11. We have heard learned Counsel for the claimants and Mr. U.P.S. Kushwaha, learned Counsel for the Insurance Company and perused the records.

12. On perusal of the records, it reflects that while deciding issue Nos. 3 and 6, as noted above, the Tribunal has recorded a specific finding of fact that according to the claimants, at the time of accident, deceased was the Principal of the School and his monthly salary was Rs. 9,000 per month but no sufficient evidence was produced on behalf of the claimants in this regard and further only a certificate issued by the present Principal was produced. Claimants have also not produced the salary register as well as attendance register and, as such, the Tribunal, on the evidence on record, came to the conclusion that after 1994, no evidence of working of the deceased as Teacher was produced.

13. On perusal of the lower Court record, it reflects that an undated certificate issued by the present Principal of the College with respect of the income of the deceased was on record on a white paper. We are of the view that this document appears to be forged insofar as this certificate has neither been issued on a letterhead of the Principal nor any date has been mentioned nor the sanctity of this letter has been examined or proved. Further no evidence is on record, which shows that at the time of accident, income of the deceased was Rs. 9000. Thus, the findings recorded by the Tribunal are not perverse.

14. Having heard learned Counsel for the parties and perusing the records, we are of the view that there is no illegality and infirmity in the impugned award. Both the appeals are dismissed accordingly.