

(1987) 10 AHC CK 0015
In the Allahabad High Court

Dhrushri and Others

APPELLANT

Vs

Suraj Narain Chaudhari and Others

RESPONDENT

Date of Decision : 19-10-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107(a)

Civil Procedure Code, 1908 (CPC) — Section 107(a)

Civil Procedure Code, 1908 (CPC) — Section 107(a)

Citation : (1988) 1 ACC 239

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Judgement

N.N. Mithal, J.—The claimants being dissatisfied with the amount of compensation awarded by the Motor Accidents Claims Tribunal have come up in appeal.

2. The deceased was going on a bullock cart from Etawah to his village on the night of 2/3rd December, 1976 when it was hit by a tractor No. UTC 560 coming from the opposite direction which dashed against the cart in which the deceased was riding causing the cart to overturn. As a result one buffalo and the cartman Sri Krishan died. The Claims Tribunal has found that the Tractor was being driven rashly and negligently at the time of accident. As against the claim of Rs. 60,000/- a sum of Rs. 10,000/- only has been awarded.

3. In appeal the owner of the tractor has chosen not to put in any contest. However, the Insurance Company alone has come forward to oppose it.

4. Sri G.R. Jain, learned Counsel appearing for the appellant, has taken a preliminary objection that the Insurance Company has no right of being heard in opposition to the appeal. It is urged that an insurer's rights are limited to the extent provided by Section 96(2) He, therefore, urged that in so far as quantum of compensation is concerned the Insurance Company has no right at all to oppose the claim and that the insurer has no right even to justify or support the award of the Tribunal. In this connection learned Counsel has referred to a

Division Bench decision of this Court in *United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta*, . It will be interesting to note here that in that case the appeal had been filed by the Insurance Co. alone with the owner of the vehicle. On an objection taken by the respondent to the effect that a joint appeal by them was not maintainable the owner opted to have his name deleted from the array of appellants. Thereafter the appeal remained only on behalf of the Insurance Co. Relying upon the decision of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, the Bench took the view that the Insurance Co. had no right to file an appeal except on the ground mentioned in Section 96(2) of the Motor Vehicles Act and, therefore, it could not be heard for assailing the findings regarding quantum of compensation awarded. However, that case is clearly distinguishable. The appeal there had been filed by the insurer itself while the instant appeal has been filed by the claimant. Infact the insurer here is only interested in supporting the Tribunal's judgment on the basis of material already on the record and is in no way seeking to challenge its findings on any ground outside Section 96(2) of the Act.

5. Sri Shashi Nandan, for the respondent has, however, submitted that the principle underlying Section 107 (a) C.P.C. should be applied to an appeal u/s 110-D of the Motor Vehicles Act also. According to him if the conditions similar to those under which the Insurance Co. could appear to contest the claim before the Tribunal were abstain able in appeal, the insurer should be entitled to oppose the appeal. According to him despite notice to the owner he has not chosen to put in appearance. In the circumstances the Insurance Co. will be within its rights to contest the appeal. It is difficult to wholly subscribe to the view canvassed by Sri Shashi Nandan. In the first place Section 107 (2) of the Code does not in terms apply to an appeal u/s 110-D. Secondly, even if the owner has not appeared to contest the appeal that alone is not enough to place the insurer in the same position as it might have occupied before the Tribunal so as to enable it to raise all questions in appeal including those questions which were even outside the scope of Section 96(2). However the right to contest the appeal by the insurer cannot be denied and it can certainly support the decision of the Tribunal. To deny this right would be to deny justice to the insurer and may even lead to unhealthy practices being adopted by some unscrupulous claimants or vehicle owners to deprive the insurer of the very right to contest even in support of the judgment. It certainly has a right to point out to the court that on the material on record no enhancement of compensation would be justified. The preliminary objection thus raised by the appellants" cannot be sustained and is accordingly turned down.

6. Coming now to the merits. The claimants had put forth a claim for Rs. 60,000/- consisting of a claim of Rs. 4000/- as damages on account of loss of consortium to the widow, Rs. 2000/- for the loss of love and affection to the children, Rs. 200/- towards funeral expenses and Rs. 58,800/-towards dependency of the family, education of children and their marriage. As against

the first three items of claim a sum of Rs 1000/- has been awarded while against the last item of claim of Rs. 9000/- has been awarded treating life expectancy up to 36 years and contribution to family being fixed at Rs. 75/- p.m.

7. The learned Counsel for the appellants has vehemently criticised the approach of the Tribunal in this respect. According to him, father of the deceased who is one of the claimants was alive at the age of 70 years. The deceased was hardly 26 years of age and normal expectancy of life as accepted by judicial decisions is at least 60 years. In the circumstances it was urged that the deceased was expected to have lived for another 34 years. The monthly dependency as fixed by the Tribunal was also meagre and against evidence on record.

8. Having heard the submissions made by the parties and the various decisions cited the consensus of Judicial decisions appears to be that ordinarily a multiplier of either 15 or 16 should be utilised for the purposes of calculating the amount of compensation. In the case of persons dying below the age of 30 years usually the multiplier of 16 has been applied while in other cases a multiplier of 15 is to be applied. Therefore, the dependency of the family multiplied by 16 in this case would be the proper amount of compensation.

9. To arrive at the yearly dependency of the family it has come in evidence that the deceased was running a small shop in the village earning about 500/- annually besides Rs. 1,500/- as income from agriculture. The Tribunal has rejected the claim regarding income from shop and has further held that out of agricultural income at least 50% was being spent by the deceased on himself while the rest was contributed to the family. The Tribunal, therefore, fixed Rs. 75/-p.m. as the monthly dependency of the family. It is this finding which is seriously assailed by the appellants. It is urged that while there was no evidence from the side of the owner of the tractor to the contrary the widow had unequivocally stated that the deceased was running a shop, which has since been wound up, from which he used to earn about Rs. 500/- yearly. She is amply supported in this respect by PW 1 Badshah, brother of the deceased. He has stated that income of the deceased from the shop as well as from agriculture was approximately Rs. 2,000/- per year. The owner of the tractor has appeared as DW 1 but he has said nothing to controvert this. In cross-examination also nothing has been extracted from P. Ws. Thus on the evidence on record it has remained unchallenged that the total income of the deceased from agriculture and shop was Rs. 2000/- out of which Rs. 1500/- was the annual agricultural income. 9. The widow has stated that she gets the land cultivated on Batai now and she gets half of the yield from the land. She has however, not mentioned the value of the produce she received through Batai.

10. Although she has not mentioned about the price of grain which she gets after Batai, yet it has come in evidence that while the family used to get nearly 30 mounds of grain when her husband used to cultivate the land she now hardly gets 8 mounds. Therefore, she now receives only one third of grain compared to what she used to have earlier. If the price of grain earlier was Rs. 1500/- it must

now be just about Rs. 500/- causing a loss of Rs. 1000/- annually.

11. It is quite normal that the bread earner of the family spends a little more towards his own expenses apart from the mount spent on the family. There can be no hard and fast rule in this regard but usually the courts have taken the view, and rightly so, that the head x)f the family or the bread earner spends nearly one third of his income for his personal expenses which included his share of expenses in the family and deduction on this account will be a relevant deduction His earning being Rs. 2000/- annual a sum of Rs. 667/- should be deducted leaving Rs. 1333/- for the family. The agricultural land still yields an income of Rs. 500/- per year which should also be deducted from this amount. Thus the actual loss suffered by the family in monetary terms comes to Rs. 833/-. Applying the multiple of 16 the total amount of compensation payable comes to Rs. 13,300/-.

12. It was next urged for the appellant that nothing has been awarded for the loss of consortium and loss of parental affection. However, it appears to be incorrect inasmuch as Rs 1000/- has been awarded on all the three counts, mentioned earlier. The learned Counsel has urged that the amount is too low. In this connection he has referred to a decision of Andhra Pradesh High Court in Sri Sailan De vasthanam v. Bhawani Pramillamma and Ors. where Rs. 6,300/- was awarded towards loss of consortium. Similarly in West Bengal v. Satish Sharma a Division Bench of Calcutta High Court awarded Rs. 10,000/- on this count. In both these cases, however, there is no mention as to on what basis loss of consortium has been determined. It is not disputed that damages for loss of consortium can be awarded by the Tribunal. In my opinion, looking to the status of the family and other attending circumstances a sum of Rs. 3200/- on this count should meet the ends of justice. Similarly a sum of Rs. 2000/- would be a fair compensation for the loss of parental affection to the minor children besides Rs 200/- towards funeral expenses. In this manner instead of Rs. 1000/- awarded on these counts the compensation now would be Rs. 5200/-. Thus the total amount of compensation payable to the appellants would be Rs. 18,500/-.

13. The last ground of attack for the appellants was that no interest has been awarded by the Tribunal. According to Section 110-CC of the Motor Vehicles Act when the Tribunal allows a claim of compensation a direction for payment of simple interest on the amount of compensation should also be made. In my opinion the Tribunal should have awarded interest in this case also when it had decided to award compensation.

14. The appeal is accordingly allowed with proportionate costs. The amount of compensation awarded is enhanced to Rs. 18,500/- together with six per cent interest thereon from the date of making claim petition till the date of its realisation. The respondent will however, be entitled to credit the amount if any already paid. The amount of interest shall also be calculated accordingly.