
(2013) 09 AHC CK 0151
In the Allahabad High Court
Case No : F.A.F.O. No. 147 of 2012

Future Generali India Insurance Co. Ltd.	APPELLANT
Vs	
Maboon and Others	RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 4 ALJ 721 : (2014) 1 AWC 479

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Dinesh Kumar, for the Appellant; Dharendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.—Heard learned counsel for the appellant as well as learned counsel for the claimants-respondent Nos. 1 and 2 and perused the record. The present appeal has been filed against the judgment and award dated 5.11.2011 passed by the Motor Accident Claims Tribunal in M.A.C. No. 79 of 2011, Maboon and another v. Ajai Kumar and others, whereby the learned Tribunal has awarded a sum of Rs. 4,12,500 alongwith interest at the rate of 6% p.a. from the date of filing the claim petition till realization of the awarded amount.

2. Learned counsel for the appellant has submitted that the alleged accident dated 16.2.2011 was a head-on-collision due to contributory negligence of the drivers of both the vehicles. The learned Tribunal has grossly erred in awarding compensation only against the appellant, the insurer of vehicle No. U.P.-32/CZ-5319 (Tanker).

3. It is further submitted that the learned Tribunal has committed error in law while applying the multiplier of 17 in calculating the amount of compensation. The deceased was unmarried and one claimant being the father, the multiplier of the age of father should have been applied by the Tribunal.

4. In support of his submissions, learned counsel for the appellant relied on the

judgments of the Apex Court in the cases of New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, ; National Insurance Company Ltd. Vs. Shyam Singh and Others, and Reshma Kumari and Others Vs. Madan Mohan and Another, .

5. Learned counsel for the respondents-claimants, on the other hand, submitted that there is nothing on record to indicate contributory negligence on the part of driver of the motor-cycle bearing registration No. U.P.-33/S-5899. The driver of vehicle No. U.P.-32/CZ-5319 (Tanker) due to rash and negligent driving had collided with the motor-cycle in which the driver of the motor-cycle No. U.P.-33/S 5899 had sustained injuries and died on spot.

6. It is also submitted that one of the claimant was a minor being brother of the deceased and the learned Tribunal has considered the question of application of multiplier in calculating the compensation and has held that since the claimants are father and minor brother of the deceased, the multiplier on the age of deceased, i.e., multiplier of 17 appears to be just and proper.

7. Submission is that in the cases where the claimants are parents, the Apex Court has held that in case the deceased is unmarried the multiplier should be applied considering the age of parents and their dependency on the deceased.

8. Further, submission is that the learned Tribunal has rightly applied the multiplier of age of the deceased while calculating the compensation as per the schedule given in Section 163A of Motor Vehicles Act.

9. I have considered the submissions made by the parties' counsel and gone through the records.

10. The short question involved in the appeal is whether there was any contributory negligence on the part of both the drivers of the vehicles involved in the accident and whether the learned Tribunal has correctly applied the multiplier of 17 while calculating the amount of compensation awarded to the claimants.

11. So far as the question of contributory negligence is concerned, the accident involving the vehicle No. U.P.-32/CZ-5319 (Tanker) and motor-cycle No. U.P.-33/S-5899 on 16.2.2011 is not disputed. It is also not disputed that in the said accident the deceased Shaan Mohammad had sustained injuries due to which he had died on the spot.

12. It is to be noted that the learned Tribunal while deciding the claim had framed certain issues and while deciding those issues has held that the said accident had taken place due to rash and negligent driving of driver of the vehicle No. U.P.-32/CZ 5319 (Tanker) in which Shaan Mohammad sustained injuries and died on spot. There is nothing on record to indicate that there was contributory negligence on the part of the driver of motor-cycle.

13. Learned counsel for the appellant failed to show any document on the basis of which it could be submitted by him that there was no contributory negligence.

Simply because it was a head-on-collision does not mean that there was contributory negligence on the part of both the drivers.

14. The appellant was given opportunity before the Tribunal as well as before this Court to establish that there was contributory negligence on the part of the driver of both the vehicles, however he has not been able to establish the same.

15. So far as the question of application of multiplier 17 while calculating the amount of compensation as done by the learned Tribunal is concerned, it is to be noted that the claim petition was filed on behalf of two persons; namely, Maboon son of Imtiyaz and Altaf Hussain son of Maboon aged 17 years. The claimant No. 1 is father of the deceased whereas claimant No. 2 is minor brother of the deceased.

16. The learned Tribunal has come to the conclusion that since one of the claimant is minor, as such the multiplier cannot be said to be applied considering the age of father only.

17. In the judgments of the Apex Court relied upon by learned counsel for the appellant, as referred to hereinabove, the claim petitions were filed by the parents of the unmarried deceased persons. The Apex Court has held that the multiplier is determined by age of deceased or claimants whichever is higher. However, in the present case one of the claimant is minor brother of the deceased who was dependent on the deceased, as such the learned Tribunal has rightly applied the multiplier of 17 on the age of the deceased. In the facts and circumstances of the present case the judgments of the Apex Court relied on by learned counsel for appellant are of not much help to him.

18. I am of the view that since the claimant No. 2 being the minor was also dependent on the deceased, there was no illegality in applying the multiplier of 17 considering the age of the deceased. The learned Tribunal has rightly applied the multiplier of 17 as provided under the schedule given in Section 163A of Motor Vehicles Act. The judgment and award, as such, do not call for any interference by this Court.

19. The appeal being devoid of merits is dismissed.

20. The statutory amount deposited before this Court at the time of filing of the appeal shall be remitted back to the Tribunal forthwith. The appellant shall comply the judgment and award of the learned Tribunal and pay the entire amount under the award within a period of six weeks from today after deducting the amount already paid to the respondents-claimants, if any.