(2010) 07 AHC CK 0494

In the Allahabad High Court

Case No : F.A.F.O. No. 253 of 2009

Gayana Devi and Others — APPELLANT

Vs

New India Assurance Co. Ltd. and Another — RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2010) 4 AWC 4090

Hon'ble Judges : Yogesh Chandra Gupta, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh and Yogesh Chandra Gupta, JJ.—Heard Sri Rakesh Pratap Singh, learned Counsel for the appellants and Sri Anadi Krishna, advocate, holding brief of Sri Sanjiv Agarwal, learned Counsel for the respondents and perused the record.

2. Appeal u/s 173 of the Motor Vehicles Act has been preferred against the impugned award dated 21.11.2008, passed by the Motor Accident Claims Tribunal, district Faizabad in Claim Petition No. 121 of 2004.

3. The brief facts giving rise to the present controversy is discussed hereinafter.

4. The deceased Hart Nath Yadav was a driver of truck No. U.P. 42/6836. In the midnight of 16/17th January, 1992 at about 11.30 p.m., while the deceased was driving the vehicle from Mankapur towards Gonda and because of mechanical failure near Khorhans, the truck became disbalanced and crashed with a tree resulting in the death of driver Sri Hari Nath Yadav. An F.I.R. was lodged on 17th January, 1992 at police station Motiganj, district Gonda. At the time of death, deceased was about 30 years of age. The dependents of the deceased Sri Hari Nath Yadav filed a claim petition claiming a compensation of Rs. 15 lacs and odd. The Tribunal framed issues and arrived to the conclusion that the claimants are entitled for compensation, as there was no breach of condition with regard to

insurance policy and and the requirements of Section 166 of the Motor Vehicles Act were fulfilled. The Tribunal also came to the conclusion that in the year 1992 as the monthly income of the driver by way of salary should have been Rs. 3,000 per month. The Tribunal out of monthly income of Rs. 3,000 deducted Rs. 1,200 for fooding and lodging and then again from remaining Rs. 1,800 1/3rd amount was deducted in lieu of personal expenses.

5. While assailing the impugned award, learned Counsel for the appellant contended that Tribunal could not have deducted more than l/3rd of the salary in lieu of personal expenses.

6. Under Second Schedule of Motor Vehicles Act, maximum deduction provided for personal expenses is l/3rd of the income. The deduction of Rs. 1,200 for fooding and lodging and then l/3rd with regard to personal expenses seems to be incorrect. Fooding, lodging and clothing all these are part of the personal expenses and it should not be more than l/3rd. The Tribunal had not taken note of the Second Schedule of the Motor Vehicles Act in letter and spirit. The Tribunal should have proceeded strictly in accordance with the Second Schedule of Motor Vehicles Act with regard to deduction in question.

7. Now it is settled law that so far as the payment of compensation is concerned, the structured formula given in Second Schedule is a guideline and in appropriate case Tribunal has got right to pay higher compensation but ordinarily it must not be less than what has been provided in the Second Schedule of the Motor Vehicles Act.

8. The assessment of compensation on the basis of monthly income of Rs. 3,000 seems to be just and proper in view of the recent judgment of the Hon''ble Supreme Court in the case of Laxmi Devi and Ors. v. Mohammad Tabbar and Anr. 2008 (2) TAC 394 : 2008 (3) AWC 2346 (SC).

9. In view of the above, the maximum deduction from the assessed income should not be more than 1,000 per month. Keeping in view the age of the deceased between 30 to 35, multiplier of 17 has correctly been applied.

10. In case amount of Rs. 24,000 is multiplied by 17, total compensation comes to Rs. 4,08,000 adding the funeral expenses of Rs. 2,000. Loss of consortium of Rs. 5,000 and loss of estate of Rs. 2,500. The total entitlement of the claimants comes to Rs. 4,17,500.

11. In view of the above, appeal is allowed. The impugned award dated 21.11.2008 stands modified holding the appellant to be entitled to Rs. 4,17,500 with interest @ 6% from the date of moving of application before the Tribunal.

12. Respondents insurance company shall deposit the amount in terms of present judgment before the Tribunal within two months. The amount deposited in this Court shall be remitted to the Tribunal forthwith. Tribunal to proceed accordingly.