
(2013) 09 AHC CK 0251
In the Allahabad High Court
Case No : F.A.F.O. Defective No. 879 of 2013

Hari Sewak alias Bhagat Purwar and Others	APPELLANT
Vs	
Jahangir and Others	RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 AWC 938

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Rajiv Sharma and Dr. Satish Chandra, JJ.—Present appeal has been filed by the appellant-claimant, for the enhancement of the compensation, u/s 173 of Motor Vehicles Act, 1988, against the judgment and order dated 20.12.2011, passed by the Motor Accident Claims Tribunal, Lakhimpur Kheri in Claim Petition No. 339 of 2009. Hari Sewak @ Bhagat Purwar and others v. Jahangir and others. The brief facts of the case are that on 5.9.2009, at about 3.40 p.m., the deceased Smt. Bitto Devi was going in a Jeep bearing number U.P. 31/0936 from Lakhimpur Kheri to her house. When she reached near Sisaiya Road, from the opposite direction, a truck bearing number U.P. 21 N/7060 was coming, whose driver was driving it carelessly, rashly and negligently and collided with the Jeep. The deceased succumbed to injuries and died in the hospital. The claimants-appellant have filed the claims petition before the Tribunal, who after examining the entire evidence has awarded a total compensation of Rs. 2,40,500 against the insurance company. Still not being satisfied, the appellants-claimant have filed the present appeal.

2. With this background, Sri Akash Deep Shukla, learned counsel for the appellants submits that the compensation is meagre one. The deceased was running a milk dairy in addition to the embroidery netting etc. but notional income of Rs. 3,000 was taken into consideration by the Tribunal. Lastly, he made a request for enhancement of the amount of compensation.

3. After hearing learned counsel and on perusal of the record, it appears that the

accident is not in dispute. Both the drivers were holding valid driving licence and the truck was insured with opposite party No. 3-I.C.I.C.I. Lombard Insurance Company Ltd. and on the date of accident. Policy was alive. The Tribunal after examining the site plan and witnesses observed that it was a contributory accident. So, the liability was fixed in the ratio of 60% and 40% between the truck and jeep. The only disputed point is the amount of compensation.

4. From the record, it appears that the deceased was in the age group of 41 to 45, so the multiplier of 14 was rightly applied. In the absence of any documentary evidence/proof, the notional income of Rs. 3,000 was taken into consideration by the Tribunal. The same also appears reasonable as per the ratio laid down in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, . There were five dependents of the deceased, so 1/4th was deducted from the income for personal purposes. In the peculiar facts and circumstances of the case, the compensation awarded by the Tribunal appears reasonable. Hence, there is no reason to interfere with the impugned award and the same is hereby sustained alongwith the reasons mentioned therein except the date of interest.

5. It may be mentioned that in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, the Hon''ble Apex Court observed that compensation is not a source of profit or earning.

6. In the instant case, the Tribunal has awarded simple interest @ 8% from the date of judgment, but in the case of Durga Pd. Singh and another v. Bholu Singh and others. F.A.F.O. No. 875 of 2006, decided by this Court, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity as per the observation made by the Hon''ble Supreme Court in the case of Abati Bezbaruah. Further, the interest was awarded from the date of claimant's application made before the Tribunal in the following cases too:

1. Parikh Engineering and Body Building Company Limited Vs. Smt. Pramila Karwa and Others, :

2. Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, : and

3. Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, .

7. This view was also followed in the case of Smt. Kamla Devi and Others Vs. Chandra Engineering Corporation and Others, , F.A.F.O. No. 238/1994, decided on 4.11.2008 by this Court, where it was mentioned that the interest will have to be awarded from the date of filing of the claim petition. The inspiration may also be drawn from the Arbitration and Conciliation Act, 1996 whereby pre-reference and pendente lite period interest is directed to pay by the Apex Court in the case of B.L. Gupta Construction (P) Ltd. Vs. Bharat Cooperative Group Housing Society Ltd., .

8. In the light of above discussions and by considering the totality of the facts

and circumstances of the case, we are of the view that the interest will have to be awarded from the date of filing of the claim petition before the Tribunal. Hence, the impugned order passed by the Tribunal is modified accordingly.

9. The appeal is partly allowed at the admission stage. However, the insurance company if has any grievance, liberty is granted to approach this Court by moving proper application against this order. In the result, the appeal is partly allowed at the admission stage.