
(1985) 07 AHC CK 0013
In the Allahabad High Court

Kumari Irma Siddiqui

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-07-1985

Acts Referred:

Citation : (1986) 1 ACC 248 : (1987) ACJ 645

Hon'ble Judges : R.K. Shukla, J;N.D. Ojha, J

Bench : Division Bench

Judgement

N.D. Ojha, J.—These three first appeals from order have been filed against the composite award dated 14th August, 1978 given by District Judge, Banda in Motor Accident Claim Petition Nos. 33/70 of 1977, 36/70 of 1977 and 40/70 of 1977 whereby a sum of Rs. 1,19,467/- was awarded to the claimants in the aforesaid three claim petitions as compensation consequent upon the death of Sri Rais Ahmad, Executive Engineer, Ken Canal Division Banda on 22nd May 1977 caused in an accident which took place at about 12.20 A.M. in the night between 20th and 21st May 1977 at Shukul Kuwan, Banda-Chilla road near about two miles from Banda, Claim Petition No. 33/70 of 1977 had been filed by Km. Irma Siddiqui, daughter and Smt. Sajda Begum widow of the deceased. Claim petition No. 37/70 of 1977 had been filed by Smt. Atikun Nisan, mother of the deceased, whereas claim petition No. 40/70 of 1977 had been filed by Smt. Razia Siddiqui another widow of the deceased. Out of the total compensation of Rs. 1,19,467/- a sum of Rs. 10,000/- was awarded to Smt. Atikun Nisan, Rs. 40,000/- to Km. Irma Siddiqui, Rs. 40,975/- to Smt. Razia Siddiqui and Rs. 20,439/- to Smt. Sajda Begum aggrieved by the award aforesaid the State of Uttar Pradesh to which the jeep belonged, by which the accident resulting in the death of Rais Ahmad Siddiqui was caused, along with some officers of the State Government of Uttar Pradesh preferred three first appeals from order in this Court. The first appeal from order filed against Smt. Razia Siddiqui was numbered as 608 of 1978 that which was filed against Km. Irma Siddiqui and Smt. Sajda. Begum numbered as 609 of 1978 and the one against Smt. Atikuu Nisan was numbered as 42 of 1979. A fourth first appeal from order was filed by Km, Irma Siddiqui

and Smt. Sajda Begum which was numbered as 593 of 1978. A cross-objection has also been filed by Smt. Razia Siddiqui in first appeal from Order No. 608 of 1978.

2. The First Appeal From Order No. 42 of 1979 filed by the State of Uttar Pradesh against Smt. Atikun Nisan was dismissed by this Court on 21st December 1981, for non-prosecution inasmuch as Smt. Atikun Nisan was not served with the notice of the appeal and no steps to serve her, notwithstanding time having been granted with a stop order, were taken. The result of the award appealed against wherein has been held that the dismissal of First Appeal From Order No. 42 of 1979 is that the award appealed against wherein it has been held that the accident was caused on account of the rash and negligent driving of the driver of the jeep and the total amount of compensation has been determined at Rs. 1,19,467/- has become final. In case the First Appeal From Order Nos. 608 and 609 filed by the State of Uttar Pradesh are now allowed it will result in two sets of inconsistent decrees. One passed on the basis of the award of First Appeal From Order No. 42 of 1979 allowing Rs. 1,19,467/- as compensation against the State of Uttar Pradesh and the other that may be passed in these two first appeals from order allowing a lesser amount or no amount of compensation against it. In our opinion these two first appeals from order have on account of the dismissal of first appeal from order No. 42 of 1979 have become improperly constituted and deserve to be dismissed on this ground alone. In First Appeal From Order No 593 of 1978 filed by Km Irma Siddiqui and Smt. Sajda Begum and the cross objection filed by Smt. Razia Siddiqui a prayer for enhancement of the total amount of compensation of Rs. 1,19,467/- awarded by the Tribunal has been made.

3. In support of this prayer it has been urged by Sri R.K. Trivedi counsel for the appellant in First Appeal From Order No. 593 of 1978 and Shri Dinesh Kachkar counsel for the cross-objector Smt. Razia Siddiqui in F.A.F.O. No. 608 of 1978 that the District Judge has committed an error in determining the compensation on the basis of the salary which the deceased was getting at the time of his death. According to them the prospects of higher salary being paid to the deceased on account of his subsequent promotion has not been taken into consideration. We find no substance in this submission. It is true that had the deceased lived till the age of retirement, chances of getting higher salary on account of promotion were not ruled out. However, in such cases the chance of the deceased dying even otherwise on account or the chance of even his services being terminated on account of some reason or the other prior to his retirement is also not ruled out. A balance has, therefore, to be struck in between these two conflicting possibilities. In this view of the matter we do not find any error committed by the District Judge in determining, the amount of compensation on the basis of the salary which the deceased was getting at the time of his death and out of which the claimants were being maintained which may justify interference.

4. It was then urged that 33 per cent deduction in lieu of lump sum payment is excessive. In this connection it has been brought to our notice that in some cases deductions of 25 per cent and 30 per cent alone were made for lump sum payment. A conspectus of the various authorities on the point indicates that no hard and fast rule has been laid down in the matter of determination of the percentage of deduction which is to be applied in lieu of lump sum payment. There are cases including cases of this Court where 33 per cent of deduction has also been made. Reference in this connection may be made to *Neelima Arora v. Union of India* AIR 1978 All . III and *Brij Kali Devi and Others Vs. Ramchand Bishan Singh and Others*, .

5. Counsel for Smt. Sajda Begum one of the co-widows of the deceased who is appellant No. 2 in First Appeal From Order No. 593 of 1978 made a further submission that in apportioning the compensation between the two-co-widows of the deceased namely, Smt. Sajda Begum and Smt. Razia Siddiqui the District Judge has committed a clerical error. It has been pointed out that in paragraph 2 of the award the District Judge has stated the age of Smt. Sajda Begum to be 40 years and the age of Smt. Razia Siddiqui to be 35 years. In paragraph 19 of the award, however, while apportioning the compensation between these two widows the District Judge proceeded on the basis that the age of Smt. Razia Siddiqui was 25 years and that of Smt. Sajda Begum as 39 years. Having heard counsel for the Smt. Sajda Begum and Sri Dinesh Kachkar who is appearing for Smt. Razia Siddiqui and has argued the cross-objection filed by her as already pointed out above, we find substance in the submission aforesaid. In paragraph 19 of the award the District Judge has held that "Smt. Razia Siddiqui has stated her age as 25 years." It is on this basis that her age has been taken by the District Judge to be 25 years. In this connection it may be pointed out that a perusal of the original claim petition filed by Smt. Razia Siddiqui indicates that she had given her age there in as about 35 years. In the appeal in which Smt. Razia Siddiqui has filed a cross-objection, a counter affidavit sworn on 1st October, 1981 has also been filed by her in which she has stated her age to be about 39 years. The age as given in the aforesaid counter affidavit in 1981 corresponds with the age of Smt. Razia Siddiqui as given by her in her claim petition as about 35 years in 1977 when the claim petition was filed. In this view of the matter it is apparent that even if she gave her age as 25 years in her statement that was apparently due to some error and her age as given in the claim petition and the counter affidavit aforesaid has to be given preference. The apportionment of the compensation between the two co-widows should have been made on the basis that the age of Smt. Razia Siddiqui was 35 years at the time when the claim petition was filed and of Smt. Sajda Begum as 40 years. The District Judge has taken the life expectancy of each of the two co-widows as 60 years. On that basis he apportioned the compensation. Even applying the same test which has been applied by the District Judge compensation has to be apportioned between the two co-widows on the basis that the age of Smt. Razia Siddiqui was 35 years at the relevant time and of Smt. Sajda Begum as 40 years. Counsel for these two

widows are agreed that if compensation is apportioned on this basis out of the sum of Rs. 61467/- earmarked by the District Judge for the two co-widows a sum of Rs. 34,147/- shall be payable to Smt. Razia Siddiqui whereas a sum of Rs. 27,320/- shall be payable to Smt. Sajda Begum.

6. Before parting with these cases we wish to point out that it is F.A.F.O. No. 608 of 1978 in which Smt. Razia Siddiqui is respondent No. 1. The number of the first appeal from order as given in her cross-objection also in the counter affidavit referred to above, has been shown as F.A.F.O. No. 609 of 1978. This obviously seems to be a clerical error. As such the cross-objection of Smt. Razia Siddiqui as also the counter affidavit referred to above shall be taken out from the record of F.A.F.O. No. 609 of 1978 and placed on the record of F.A.F.O. No. 608 of 1978.

7. In view of the foregoing discussion First Appeal From Order Nos. 608 of 1978 and 609 of 1978 filed by the state of Uttar Pradesh and others are dismissed. The cross-objection filed by Smt. Razia Siddiqui in First Appeal From Order No. 608 of 1978 is also dismissed. First Appeal From Order No. 593 of 1978 is allowed in part to this extent that in supersession of the award of the District Judge appealed against in this behalf out of the compensation of Rs. 61,467/- earmarked for the two co-widows a sum of Rs. 34,147/- (in place of Rs. 40,978)/- as awarded by the District Judge) shall be payable to Smt. Razia Siddiqui and the balance of Rs. 27,320/- (in place of Rs. 20,439/- awarded by the District Judge) shall be payable to Smt. Sajda Begum. The amount of pendent lite and future interest shall also be calculated on this basis. The award appealed against is modified accordingly. In the circumstances of the case the parties shall bear their own costs in all these three appeals.