

(2017) 12 AHC CK 0016
In the Allahabad High Court
Case No : 633 of 2010

Manish Kumar Srivastava

APPELLANT

Vs

National Insurance Comp. Ltd

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

Citation : (2017) 12 AHC CK 0016

Hon'ble Judges : Devendra Kumar Arora, Rang Nath Pandey

Bench : Division Bench

Advocate : Vishal Tahlani, Jagrit Sharma, Hari Prakash Srivastava, Vijay Pratap Singh, Zakir Hussain

Final Decision : Allowed

Judgement

1. In a motor accident, Manish Kumar Srivastava (appellant of FAFO Nos.632 of 2010 and 633 of 2010) suffered bodily injuries and his son Anand Kumar Srivastava died. It happened on September 09, 2002 at 5.00 PM, when the appellant along with his son Anand Kumar Srivastava was going on a Bajaj Super Scooter, bearing registration No. U.P.-32-6764 to Power House near HAL, Lucknow and when they reached near Sabji Mandi, a Tata Qualis, bearing registration No. U.P. A.M. 8584, which was being driven by respondent No.2 rashly and negligently, going on Faizabad Road from Badshah Nagar side, hit the scooter and the driver of the offending vehicle (tata qualis) ran away after crushing the appellant and his son, as a result of which the appellant sustained fracture and grievous injuries, whereas his son died on the spot.

2. In order to get compensation, Manish Kumar Srivastava filed a claim petition No. 471 of 2003 on account of the injuries sustained by him. Another claim petition No. 531 of 2003 before the Motor Accident Claims Tribunal, Lucknow was filed for the death of his son in a motor accident on a public place.

3. In claim petition No. 471 of 2003, which was filed by Manish Kumar Srivastava (appellant) claiming compensation towards the injuries sustained by him in a

motor accident, the MACT, vide award dated January 19, 2010, awarded him compensation to the tune of Rs. 3,10,000/- along with simple interest @6% from the date of filing the claim petition till its realization under the following heads:-

Head

Amount (in Rs.)

Medical Expenses - 30,000/-

Nutritional Food - 10,000/-

Assistant expenses - 10,000/-

Transportation expenses - 5,000/-

Mental & Physical agony - 5,000

Disability - 2,50,000/-

TOTAL - 3,10,000/-

4. In claim petition No. 531 of 2003, which was filed by Manish Kumar Srivastava claiming compensation on account of death of his son-Anand Kumar Srivastava, the MACT, vide award dated 19.1.2010, awarded compensation to the tune of Rs.1,80,000/- along with simple interest at the rate of 6% from the date of filing the claim petition till its realization.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal vide award dated 19.1.2010 passed in claim petition No. 471 of 2003 filed on account of injuries suffered by him, Manish Kumar Srivastava has filed First Appeal From Order No. 633 of 2010 for enhancement of compensation, whereas the National Insurance Company Ltd. has filed First Appeal From Order No. 630 of 2010, challenging the findings recorded by the Tribunal vide award dated 19.1.2010 passed in claim petition No. 471 of 2003.

6. First Appeal From Order No. 632 of 2010 has been filed by Manish Kumar Srivastava for enhancement of compensation as awarded by the Tribunal vide award dated 19.1.2010 in Claim Petition No. 531 of 2003 filed on account of death of his son Anand Kumar Srivastava, whereas National Insurance Company Ltd. has filed First Appeal From Order No. 629 of 2010, challenging the findings recorded by the Tribunal vide award dated 19.1.2010 in claim petition No. 531 of 2003.

7. Since the common questions of law and facts are involved in the above-captioned appeals, therefore, all the appeals being inter connected are being decided by a common order.

8. Heard Mr. Vishal Tahlani, learned Counsel for the appellant/claimant and Mr. Hari Prakash Srivastava, learned Counsel for the respondent-Insurance Company.

9. While challenging the quantum of compensation awarded by the Tribunal vide

award dated 19.1.2010 in claim petition No. 471 of 2003 filed in respect of injury sustained by claimant-Manish Kumar Srivastava, learned Counsel for the appellant/claimant Mr. Vishal Tahlani, has submitted that though issue no. 1 and 2 has been decided in favour of the injured claimant by the Tribunal but even then, the tribunal, while deciding issue No.6 in respect of amount of compensation, has failed to appreciate the income of the injured claimant in its correct prospective. His submission is that injured claimant/appellant is a Mechanical Engineer having his M.E. degree from Republic of Armenia and at the time of occurrence of accident, he was doing a job and earning Rs.35,000/- per month and was searching for a better job but the Tribunal has erred in assuming the income of the injured claimant as Rs.3000/- per month, which is not just for a person, who is an Engineer by profession.

10. Elaborating his submission, learned counsel for the injured claimant/appellant has submitted that the Tribunal, while considering the age of the deceased, has applied wrong multiplier. He has also submitted that in the accident the claimant/appellant received several fractures on different parts of the body including ribs resulting into permanent disability, due to which, the claimant/appellant is unable to do daily work smoothly and the treatment of the claimant/appellant was going on at the relevant time, but the Tribunal did not consider these facts and assessed only Rs.2,50,000 towards physical disability, which is not correct.

11. To strengthen his submission, learned Counsel for the claimant/appellant has relied upon National Insurance Company Ltd. Vs. R.K. Sachdeva : 2004 ACJ 1757 (Ald.), M.V. Chowdappa Vs. Mohan Breweries & Distilleries Ltd. and another : 2005 ACJ 644 (Karnatka), Aswani Kumar Vs. Darshan & others : 2011 ACJ 2082 (H.P.) and N.I.A. Vs. Shweta Dilip Mehta & others : 2010 (2) TAC 308 (Bom.), Meera Devi and another Vs. Himachal Road Transport Corporation and others : 2014 ACJ 1012, In so far as the death of claimant's son Anand Kumar Srivastava in the motor accident, is concerned, Counsel for the claimant/appellant has submitted that if a person is not earning, then, too notional income has to be taken into consideration but the Tribunal, while dealing with issue No.4 with respect to compensation, has wrongly considered the income of the deceased and awarded only Rs.1,80,000/- in the case of death of 8 years old child, which is too little. 12. To strengthen his submission, learned Counsel for the claimant/appellant has relied upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Farzana 2009 ACJ 2763 and R.K. Malik Vs. Kiran Pal and others : 2009 (III) T.A.C. 1 (S.C.), wherein the Apex Court had granted further compensation for loss of dependency as Rs. 2,25,000/- with compensation for loss of future prospects as Rs.75,000/- and nonpecuniary compensation as Rs.75,000/- in the case of death of a child. He has also relied upon Kishan Gopal and another Vs. Lala and others : 2013 ACJ 2594 (S.C.), N.I.C. Vs. Mitesh Kumar Pandey : 2013 (I) AICC 763, R.K. Malik Vs. Kiran Pal and others : 2009 (III) T.A.C. 1 (S.C.), Rajesh & others Vs. Rajbir Singh : 2013 A.C.J. 1403 (SC), Sushila Devi and another Vs. Naval Kishore and another (in

FAFO No. 169 of 2013, decided on 3.4.2014), The National Insurance Co. Ltd. Vs. Ratna Awasthi and others (in FAFO No. 545 of 2013, decided on 24.5.2013.

Per contra, learned Counsel for the National Insurance Company has submitted that while deciding issue no. 2 regarding contributory negligence, the tribunal has wrongly considered the evidence on record as injured himself had deposed that the accident happened due to head on collision between Vehicle No. U.P. 32 AM/8584 and his scooter No. U.P. 32/6764. Thus, the findings recorded by the Tribunal are unreasonable and erroneous.

13. Counsel for the Insurance Company has further submitted that though there were no bills and vouchers towards medical expenses but the Tribunal erred in awarding a sum of Rs.30,000/- under the head of medical expenses. Further, alleged disability certificate of the injured has not been proved by the doctor, therefore, it cannot be considered as evidence but the Tribunal has wrongly awarded under the head of disability. He has also submitted that the injured himself has stated that he was in search of the job, which means that there was no income of the injured. Thus, it cannot be said that there was any loss of income due to alleged disability.

14. To strengthen his submission, learned Counsel for the Insurance Company has relied upon Laxmi Devi & others Vs. Mohammad Tabbar & another : II (2008) ACC 364 (SC) and Puttamma and others Vs. K.L. Narayana Reddy and another : AIR 2014 SC 706. From perusal of the record, it appears that in both the claim petitions i.e. Claim Petition Nos. 471 of 2003 and 531 of 2003, the Tribunal, on the basis of pleadings, has framed following six issues :-

"1. Whether on 1.9.2002, at 5.00 pm, on account of careless and negligent driving by the driver of Vehicle No. U.P. 32 AM 8584, accident had occurred, causing injuries to the claimant ?

2. Whether accident had occurred on account of negligence of the claimant ? If yes, then, its effect ?

3. Whether vehicle bearing registration No. U.P. 32 A.M. 8584, involved in the accident was insured with the National Insurance Company and on the date and time of the accident, the insurance certificate was valid and effective ?

4. Whether on the date and time of the accident, driver of the vehicle involved in the accident, bearing registration No. U.P. 32 AM 8584, was having valid and effective license ?

5. Whether there is defect in the claim petition for not making owner of the Scooter and its insurance company as party to the claim petition ?

6. How much and from which of the defendants, the claimant is entitled to get amount of compensation together with interest ?

15. In respect of issue Nos. 1 and 2, the Tribunal, on the basis of evidence on record, found that accident had occurred on account of rash and negligent

driving of Vehicle No. U.P. 32 AM 8584 (qualis) on 1.9.2002 at 5.00 PM, as a consequence thereof, claimant and his son Anand Kumar Srivastava sustained grievous injuries, whereupon Anand Kumar Srivastava died. The Tribunal further found that there was no fault of the driver of scooter. Accordingly, issue Nos. 1 and 2 have been decided in favour of claimant. Issue No.3 has also been decided in favour of the claimant on the ground that on the date and time of the accident, the Vehicle No. U.P. 32 AM 8584 was insured with the National Insurance Co. Ltd. The Tribunal has also decided issue No.4 in favour of the claimant holding that at the time of accident, driver of vehicle No. U.P. 32 AM 8584 was having valid and effective license. Issue No. 5 has also been decided by the Tribunal in favour of the claimant. While deciding issue No.6 with regard to quantum of compensation, the Tribunal found that at the time of accident, the claimant was aged about 38 years. The Tribunal has further found that injured/ claimant was the degree holder in Mechanical Engineering but the claimant failed to prove that at the time of accident, claimant was earning Rs.35000/- per month, whereas claimant in his statement has stated that at the time of accident, he was residing at Lucknow and was in search of a job. On considering these facts, the Tribunal came to the conclusion that at the time of accident, claimant was unemployed and he failed to prove his monthly income as alleged. In these backgrounds, the Tribunal assessed the monthly income of the claimant as Rs.3000/- per month.

16. In so far as assessing the disability, the Tribunal opined that disability certificate, which has been produced by the claimant, showing 45% disability, has been certified by the Clerk Sri Anuj Kumar Singh working in the office of issuing authority. In these backgrounds, the Tribunal came to the conclusion that since the claimant was having only 45% disability, therefore, it cannot be assumed that the claimant is unable to do any work. As such, the Tribunal, upon considering the extent of disability of the claimant, has awarded a sum of Rs.2,50,000/- towards disability. In respect of medical treatment, the Tribunal has awarded Rs.30,000/- towards medicine, Rs.10,000/- towards diet, Rs.5000/- towards transportation, Rs.10,000/- towards expenditure incurred for assistance and Rs.5000/- towards physical and mental agony. Accordingly, the Tribunal, vide award dated 19.1.2010, awarded total sum of Rs.3,10,000/- as compensation along with simple interest at the rate of 6% from the date of filing the claim petition till its realization.

17. After going through the impugned award, we are of view that since claimant himself has stated on oath that at the time of accident, he was searching job in the city of Lucknow, meaning thereby the claimant was unemployed at the time of accident and more so the claimant has failed to produce any income certificate, therefore, the Tribunal in absence of any concrete evidence has rightly assessed the income of the deceased as Rs.3000/- per month.

18. So far as disability of the claimant is concerned, from perusal of the record, it comes out that disability certificate, which has been produced by the claimant,

shows the disability of claimant as 45%, thus, the Tribunal, upon considering the disability in the hand of the claimant, has awarded a sum of Rs. 2,50,000/- towards disability. The plea of the learned Counsel for the claimant that the Tribunal, in considering the disability of the claimant, did not consider the future prospect of the matter, cannot be accepted for the reason that the Tribunal has opined that only disability of 45% was found in the hand of the claimant, and, therefore, it cannot be said that it is extremely difficult for the claimant to do any work. Moreover, the Tribunal, after considering the entire aspect of the matter including the disability of the claimant, awarded a sum of Rs.2,50,000/- towards disability and Rs.60,000/- in different heads, as stated hereinabove. In these backgrounds, we are of the considered view that the Tribunal has recorded the findings of facts on the basis of cogent material on record, which, in our view, are sound and reasonable. Thus, the plea of the Counsel for the appellant for enhancement of compensation in the case of injured is rejected. The judgments relied by the learned Counsel for the claimant in this regard are not applicable in the facts and circumstances of the case.

19. Learned Counsel for the Insurance Company has, however, contended that while deciding issue no.2 regarding the contributory negligence of the injured, the Tribunal did not consider the statement of the injured, who had stated that the accident had occurred due to head on collision between the Vehicle No. UP-32 AM/8584 and his scooter No. U.P. 32 6764. Furthermore, though there were no bills, but even then the Tribunal has awarded a sum of Rs.30,000/- towards medical expenses. He has also submitted that alleged disability certificate of the injured was not proved by the Doctor, who has issued the same, therefore, it cannot be considered in evidence but even then, the Tribunal erred in awarding Rs. 2,50,000/- towards disability.

20. A perusal of the award impugned in claim petition No.471 of 2003 reveals that the Tribunal decided issue no.1 and 2 together with and while deciding it, the Tribunal found that though the driver of Vehicle No. U.P.-32 AM/854 (qualis) was the important witness but neither the insurance company nor the owner of the qualis vehicle in question produced the driver of qualis vehicle to prove the allegation of the Insurance Company that the accident had occurred on account of negligence of the driver of the scooter, which was being driven by the claimant at the time of accident. In these backgrounds, the Tribunal while placing reliance upon the judgment of this Court in United India Insurance Company Ltd. Vs. Sarita Rani and others, came to the conclusion that the accident had occurred due to rash and negligent driving of the Tata qualis driver.

21. On due consideration, we are of the view that the findings recorded by the Tribunal with regard to contributory negligence is correct, therefore, plea of the Counsel for the insurance company in this regard is not substantiated by any evidence. The judgment relied by the Insurance Company in this regard is not applicable in the facts and circumstances of the case.

22. So far as plea of the Counsel for the Insurance Company that though there

were no bills, but even then the Tribunal has awarded Rs.30,000/- towards medical expenses is concerned, it appears that the Tribunal found that though the medical bills have not been certified from the competent medical officer, but neither the Insurance Company nor the owner of the vehicle has produced any evidence to establish that the medical bills produced by the claimant were fabricated one or bogus. Therefore, medical bills cannot be doubted. Therefore, the Tribunal, on non-availability of any evidence on record with regard to fabricated medical bills produced by the claimant, has awarded Rs.30,000/- towards medical expenses. These findings of facts have been recorded by the Tribunal on the basis of the record, which, in our view, are correct.

23. So far as the plea of the Insurance Company that alleged disability certificate of the injured was not proved by the Doctor who has issued the same, therefore, it cannot be considered as an evidence, we are of the view that since the Tribunal, after going through the disability certificate as well as cogent material on record, found that the claimant was having 45% disability as was evident from the disability certificate certified by Sri Anuj Kumar Singh, a clerk posted in the office of issuing disability certificate and further said Mr. Anuj Kumar Singh (P.W.2) has proved the correctness of disability certificate, therefore, the Tribunal has rightly believed the disability certificate and has rightly assessed 45% disability of the claimant. Thus, the plea of the Counsel for the Insurance Company in this regard is not sustainable. The judgment relied by the learned Counsel for the Insurance Company in this regard is not applicable in the facts and circumstances of the case.

24. Counsel for the claimant, while claiming for enhancement of compensation in FAFO No. 633 of 2010, has contended that while dealing with issue No.4 with respect to compensation, the Tribunal has wrongly considered the income of the deceased and has awarded only Rs.1,80,000/- in the case of death of 8 years old child, which is inadequate.

25. The stand of the Insurance Company in this regard in assailing the findings recorded by the Tribunal in respect of death of Mr. Anand Kumar Srivastava is that the Tribunal has erred in not deducting the amount of personal expenses of the deceased from the income of the deceased while determining the award insofar as in view of Schedule II of the Act, the Tribunal ought to have deducted some amount for personal expenses of the deceased and only after deducting the amount of personal expenses, the Tribunal ought to have provided the dependency.

26. The question with regard to consideration of future prospects while awarding compensation towards death of a child in a road accident came up for consideration before the Apex Court in the case of Puttamma and others vs. K. L. Narayana Reddy and another AIR 2014 SC 706, and it held in paragraph 56 as under :- "The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we

deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport and Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of the Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (Rupees one lac) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher."

27. In view of the aforesaid legal proposition, the minor being eight years of age at the time of accident, the claimants are entitled for a sum of Rs. 1,50,000/- as compensation , which will be inclusive of loss of love and affection and miscellaneous expenses like funeral etc. However, on this amount claimants are entitled for interest @ 9% (nine) from the date of filling of the claim petition till the date of actual payment in view of the decision rendered in *Supe Dei v. National Insurance Co. Ltd and others* (2009) 4 SCC 513. The aforesaid amount shall be deposited before the Tribunal concerned within a period of two months for disbursement to the claimant.

28. All the aforesaid appeals are dismissed except FAFO No. 629 of 2010 filed by the Insurance company, which is allowed in part and the impugned award dated 19.1.2010 is modified to the above extent. The amount deposited by the appellant before this Court shall be remitted to the Tribunal concerned together with lower Court record forthwith. The amount of compensation shall be paid to the claimant within two months, failing which the claimant would be entitled for 9.5% interest on delayed payment.