
(2013) 02 AHC CK 0218

In the Allahabad High Court

Case No : First Appeal From Order No. 28 of 2011 and First Appeal From Order Defective No. 895 of 2011

Meera Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 4 ACC 879 : (2013) 2 ADJ 705

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Balendu Shekhar in First Appeal From Order No. 28 of 2011, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.

1. These two appeals have been preferred against the judgment and award dated 23.09.2010, passed by the learned Motor Accident Claims Tribunal/Special Judge (P.C. Act), Lucknow in Claim Petition No. 197 of 2004, by which a sum of Rs. 8,79,000/- has been granted together with interest at the rate of 6 per cent per annum. The State of U.P. has filed the appeal for decreasing the amount of award and the claimants have challenged the award on the ground that the compensation awarded is insufficient. Brief facts of the case are that on 4.4.2004 the deceased Raj Kumar was traveling on his motorcycle bearing registration No. U.P.-32 AY-4787 from Lucknow to Kanpur alongwith his friend Kishan and at 2.35 p.m. when they reached near Bird Sanctuary within Police Station Ajgain, District Unnao, they were hit by rashly and negligently driven jeep bearing registration No. U.P.-32-A/2242 coming from behind. Due to impact of the accident Raj Kumar died instantaneously, whose widow, mother (died during the pendency of the case), two minor daughters and three minor sons have preferred the claim petition claiming inter alia that the deceased was a railway employee having an earning of Rs. 8,740/- per month and he was of the age of 28 years at the time

of accident.

2. The claimants sought for a compensation of Rs. 24,94,8401-.

3. The opposite parties admitted the factum of accident but pleaded that the motorcyclist was overtaking a D.C.M. vehicle and met with an accident; the two persons riding on the motorcycle fell on the road. The driver of the Jeep rescued the injured and carried them to hospital. Due to this reason the claimants have maliciously preferred the claim petition against the police department and U.P. State. After filing of the written statement the opposite parties absented themselves and, as such, the proceedings continued against them ex-parte.

4. The learned Tribunal framed four issues and after recording of evidence decided the claim petition.

5. We have heard both the parties and have gone through the records.

6. The learned Tribunal has rightly discussed the evidence and has reached to the correct conclusion that the accident occurred due to rash and negligent driving of the police jeep. The claimants examined Avnish Kumar Verma who was the eye-witness. He has deposed that some time after the accident, the Police of Police Station Ajgain has reached at the place of accident. The said accident has been recorded in the general diary of Police Station Ajgain dated 4.4.2004, a copy of which has been filed as Paper No. C-28/6. The said document recites that the factum of accident was reported at the police station, by none else, than the driver of the Jeep, belonging to Police Department bearing registration No. U.P.-32-A/2242, Ram Karan Singh. The report of postmortem is Paper No. C-38/11. There is no evidence on record to rebut the factum of accident and, as such, the learned Tribunal has rightly determined the issue Nos. 1 and 2 in which it has been held that the accident took place due to rash and negligent driving of Jeep bearing registration No. U.P.-32-A/2242 and the deceased did not contribute or not act as negligent towards the accident.

7. On point of compensation, learned Tribunal has considered that the claimant No. 1, widow of the deceased Meera Devi has deposed that her deceased husband was getting a salary of Rs. 9,000/- from the Railway Department and she has also filed the salary bill for the month of March, 2004. PW-3 Sudharshan Rajput has also deposed that the deceased has received Rs. 8,740/- as salary for the month of March, 2004, after deductions.. Learned Tribunal has deducted the honorarium, and bonus to the tune of Rs. 937.75 paisa which was not being paid to a railway employee, but once in a year. The learned Tribunal has also deducted Rs. 500/- per month on account of income tax as usually paid by the deceased. After deductions, learned Tribunal has reached to the conclusion that the monthly income of the deceased was Rs. 6,800/- which comes to Rs. 81,600/- annually. Learned Tribunal has also deducted one third of the annual income towards expenses which the deceased would have spent himself had he been alive and has calculated the dependency at Rs. 54,450/- annually. As per service book of the deceased, filed vide Paper No. C-46, his date of birth was 19.01.1965. In

view of this entry, the deceased has been determined to be 39 years of age at the time of accident and as such, learned Trial Court has rightly applied the multiplier of 16. The net amount so calculated comes to Rs. 8,70,400/-. Learned Tribunal has awarded Rs. 5,000/- towards loss of consortium and, Rs. 2,500/- for loss of estate. There is no infirmity in the impugned award. Learned Tribunal has rightly determined that the mother of the deceased who died during pendency of the case need no share in the compensation so awarded. Learned Tribunal has also awarded interest at the rate of 6 per cent per annum subject to condition that if it is not paid within 40 days, the rate of interest would be enhanced to 9 per cent per annum simple interest.

8. We do not find any infirmity in the impugned award. It was argued on behalf of the claimant that where the deceased was of the age of less than 40 years, fifty per cent of the compensation, as provided by Schedule (ii) of Motor Vehicles Act, 1988 be added towards future prospects. Reliance was placed upon the law laid down by the Hon''ble Apex Court in the case of Shyamwati Sharma and Others Vs. Karam Singh and Others, , in which it has been held that:

This Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has stated the principles relating to addition to income'' towards future prospects. This Court held that wherever the deceased was below 40 years of age and had a permanent job, the actual salary (less tax) should be increased by 50% towards future prospects, to arrive at the monthly income. It also held that where the number of dependents of a deceased are in the range of 4 to 6, the deduction towards personal and living expenses of the deceased should be 25%. It further held that in regard to persons aged to 36 to 40 years, the appropriate multiplier should be 15.

On the strength of these findings the Hon''ble Apex Court has recalculated the compensation by applying the said principle. There is nothing unusual in this case and the age of the deceased was 39 years. His dependents are widow of the age of 25 years and five minor children ranging from 4 years to 11 years the law laid down by the Hon''ble Apex Court in Sarla Verma's case (supra) as relied upon in Shyamwati's case (supra) has to be followed.

9. Upon recalculation, as noticed above, the gross salary of the deceased was Rs. 6,800/- per month. Learned Tribunal has wrongly deducted the income tax as the Hon''ble Apex Court has held that the deduction to the income tax/surcharge alone should be considered to arrive at the net income of the deceased. It is settled legal position and the Courts have made it clear that where the annual income in the taxable range, appropriate deductions should be made towards tax. Hence, in this case, the annual income comes to Rs. 81,600/- excluding income tax and if the income tax is not deducted it comes to Rs. 87,600/- annually. The rate of income tax is a varying figure after permissible deductions, and the year of assessment. In either case this amount comes within taxable range and, as such we do not disturb the finding of the Tribunal regarding the amount of compensation so calculated at Rs. 8,70,400/-, the 50 per cent of

which comes to Rs. 4,35,200/-. When this amount is calculated along with loss of estate, loss of consortium and funeral expenses, it comes to Rs. 13,15,100/- Accordingly, we allow First Appeal From Order No. 28 of 2011 and dismiss the First Appeal From Order No. 895 of 2011. The judgment and award passed by the learned Tribunal is confirmed subject to modification that the claimants shall be entitled to Rs. 13,15,100/- instead of Rs. 8,79,000/-.The condition of interest shall remain the same as prescribed by the learned Tribunal.