

(2013) 04 AHC CK 0088
In the Allahabad High Court
Case No : F.A.F.O. No's. 889 and 1424 of 2001

Mohammed Yusuf and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. And Others

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 3 AWC 3238

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Akhtar Hussain, B.C. Singh, Brij Raj Singh, K.K. Yadav, R. Khan, Rizwan Ali Akhtar in F.A.F.O. No. 1424 of 2001 and N.K. Srivastava in F.A.F.O. No. 889 of 2001, for the Appellant; N.K. Srivastava, Ajay Singh, B.L. Verma in F.A.F.O. No. 1424 of 2001, B.G. Singh, B.L. Verma, Brij Raj Singh, K.K. Singh and K.K. Yadav in F.A.F.O. No. 889 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—Challenge in both the appeals is the award dated 19.3.2001 passed by the Motor Accident Claims Tribunal/Special/Additional District Judge. Jaunpur in M.A.C.T. No. 12 of 1997, Mohd. Yusuf and others v. Oriental Insurance Company Ltd. and others, so they are being heard and disposed of with this judgment. It appears that on 21.12.96 deceased Mohd. Harun son of Mohd. Yusuf resident of Mohalla Subji Mandi, P.O. and P.S. Machhlishahar, District Jaunpur was travelling in oil tanker registration No. UGT-5385 and the said tanker at about 7.00 a.m. due to rash and negligent driving by its driver had fallen into the river after dashing with a jeep. The deceased aged about 18 years died on account of fatal injuries sustained by him in the accident. The claimants being the parents, brothers and sisters filed claim petition for an award of Rs. 3,00,000 against the owner, insurer and driver of the aforesaid tanker.

2. The Oriental Insurance Company denied the factum of accident stating that the tanker was not being driven by duly licenced driver and it was not insured

with them. The owner of the tanker admitted the accident but has charged the driver of jeep No. U.P.-62A/2180. It was further alleged that the tanker was insured with the Oriental Insurance Company from 26.6.1996 to 25.6.1997. The driver of the tanker did not contest the claim petition.

3. After evidence of the parties, the Tribunal heard their counsel and through the impugned award has found that the accident took place due to sole negligence of the driver of tanker No. UGT-5385, which was insured with the Oriental Insurance Company and its driver had a valid and effective driving licence. On quantum of compensation, the Tribunal found that the claimants have failed to prove the alleged income of the deceased and has calculated the amount of compensation on his assessed annual income of Rs. 4,800 per annum. The Tribunal found that claimant Nos. 3 to 8 are brothers and sisters of the deceased, so in the life time of parents they were not dependent on the income of the deceased. The Tribunal awarded compensation of Rs. 76,800 only to the parents of the deceased together with simple interest @ 10% per annum.

4. Aggrieved, the claimants in F.A.F.O. No. 1424 of 2001 and the Oriental Insurance Company in F.A.F.O. No. 889 of 2001 have challenged the award. This F.A.F.O. has been connected with F.A.F.C. No. 1424 of 2001.

5. We have heard Sri Brij Raj Singh, learned counsel for the claimants, Sri N.K. Srivastava, learned counsel for the Oriental Insurance Company in both the appeals and carefully perused the record of the case.

6. On perusal of the claim petition we find that claimant Nos. 1 and 2 are parents of the deceased while claimant Nos. 3 to 8 are brothers and sisters of the deceased. We concur with the findings of the Tribunal that in the life time of the parents the minor brothers and sisters of the deceased are not his dependents, so the Tribunal has not erred in awarding compensation to the parents of the deceased only.

7. Learned counsel for the claimants has vehemently argued that the amount of compensation awarded in the case is wholly inadequate and too meagre. His contention is that the deceased was 18 years old young man and he was carrying on fruit and vegetables business. His alleged monthly income was Rs. 10,000. Mohd. Yusuf, P.W. 1 (father of the deceased) has stated that his son was wholesale dealer and retailer of vegetables and he used to earn Rs. 7,000-8,000 per month. In cross-examination he has admitted that the deceased was not having any licence for selling vegetables and he used to work on the licence of his brother. On a careful scrutiny of array of claimants we find that all the brothers and sisters of the deceased were younger to him and were minors so it was not possible that any of his brothers was having any licence for selling vegetables in wholesale. However, we find that the Tribunal without any basis has taken the monthly income of the deceased at Rs. 600. After deducting 1/3rd, i.e., a sum of Rs. 200 have been deducted and dependency of claimant Nos. 1 and 2 has been carved out at Rs. 400 per month, i.e., Rs. 4,800 per annum.

8. Learned counsel for the claimants has vehemently argued that the accident took place after amendment in Motor Vehicles Act was carried out in 1994. In Second Schedule of Motor Vehicles Act, it has been provided that notional income of the victim, who had no income prior to the accident would be taken by the Tribunal at Rs. 15,000 per annum. Since the deceased was major and he was allegedly engaged in the business of selling vegetables, at the most his minimum annual income should have been taken by the Tribunal at Rs. 15,000 per annum. The Tribunal has applied multiplier of "16" without giving any reasons for it. Since the deceased was a bachelor, therefore, the multiplier ought to have been taken only on the age of his parents. The father of the deceased has stated himself to be 44 years old on 17.11.2000 when his deposition was recorded before the Tribunal. The date of accident is 21.12.1996, therefore, the age of claimant No. 1 on the date of death of the deceased would be +40 years. In Second Schedule of the Motor Vehicles Act multiplier of "15" has been prescribed for the person above 40 years and not exceeding 45 years. After making deduction of 1/3rd as was being done by the Tribunal and the Court in the year 1997 the dependency of claimant Nos. 1 and 2 on the annual income of the deceased comes to Rs. 10,000 per annum. Applying multiplier of "15" on this amount, the claimant Nos. 1 and 2 are entitled to get Rs. 1,50,000 as compensation. We further find that the Tribunal has awarded interest @ 10% per annum to the claimants on the amount of compensation. This appears to be on higher side. Thus, we direct that claimant Nos. 1 and 2 shall be paid simple interest at the rate of 6% per annum from the date of filing of the claim petition till the date of final payment after making adjustment of the amount paid by the Oriental Insurance Company under the orders of this Court. The appeal filed by the claimants succeed to this extent only.

9. Now, we take up F.A.F.O. No. 889 of 2001 filed by the Oriental Insurance Company.

10. Learned counsel for the appellant in this F.A.F.O. has vehemently argued that admittedly the deceased was travelling in the tanker as gratuitous passenger because the tanker was meant to transport the liquid for example, i.e., oil etc. and deceased as a business man was going to Jaunpur. Oppugning this argument, learned counsel for the claimants has argued that the Oriental Insurance Company has taken premium for six persons under the insurance of contract from the owner of the vehicle. The Oriental Insurance Company has not filed copy of the insurance policy in appeal. On perusal of the award we find that the Oriental Insurance Company has examined Hari Narain Gupta, D.W. 1. He has proved cover note 118708 dated 26.5.96, which was issued for the insurance of the tanker in question. He has stated that the tanker was made for transporting liquid. He has further stated that if on the date of accident the tanker was carrying persons on hire then it is breach of insurance policy's terms and conditions. Sri Gupta has not categorically stated in his statement that the insurer has violated the terms and conditions of the insurance policy. It is not res Integra that the burden to prove the breach of terms and conditions of the

insurance contract lies on the Oriental Insurance Company. It was imperative on their part to positively prove the breach of insurance contract by way of oral and documentary evidence. As stated earlier, the appellant has not filed the copy of insurance policy pertaining to the tanker in question for the period 26.6.96 to 25.6.97. In cross-examination Sri Gupta, D.W. 1 has stated that the insurance policy is prepared on the basis of cover note and in the cover note in question seven persons including a driver and a cleaner were insured. In the absence of policy of insurance it cannot be said as to who were the other five persons covered under the policy of insurance. It is pertinent to note that the owner or insurer of the tanker in question has not examined the driver of the offending tanker to prove negligence of the jeep driver. He was the best person to say about the circumstances in which the deceased was travelling in his tanker at the time of accident. Thus, after careful examination of the evidence led by the appellant we find that they have failed to prove the breach of terms and conditions of the insurance policy pertaining to the tanker in question, which was duly insured by them on the date of accident. Thus, the appeal filed by the Oriental Insurance Company, i.e., F.A.F.O. No. 889 of 2001 sans merit and is liable to be dismissed. In view of the above discussions. First Appeal From Order No. 889 of 2001 is dismissed and First Appeal From Order No. 1424 of 2001 is partly allowed. Appellant Nos. 1 and 2 are awarded compensation of Rs. 1,50,000 together with simple interest @ 6% per annum from the date of filing of the claim petition till the final payment. Any amount paid to them under the award be adjusted. Interim order dated 3.7.2001 is vacated.

Cost on parties.