

(2012) 01 AHC CK 0568

In the Allahabad High Court

Case No : First Appeal From Order No. 707 of 1996

National Insurance Co. Ltd.

APPELLANT

Vs

Rajesh Tripathi and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0568

Hon'ble Judges : Yatindra Singh, J; Ram Surat Ram Maurya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. An accident took place on 22.1.1990 at 21:30 hours between Ambassador Car No. UP 31/9005 (the Car) and Truck No. DEL/5834 (the Truck). In this accident, one person, namely, Devendra Pal Singh died and three persons, namely, Rashid Khan, Chhanga Khan and Rajesh Tripathi were injured. The injured and the heirs of the deceased filed three claim petitions:

? MACP No. 45/1990 was filed by the heirs of Devendra Pal Singh for compensation.

? MACP No. 63/1990 was filed by Rashid Khan and Chhanga Khan and for compensation. They are father and son. (During the pendency of the claim petition, Rashid Khan died and his heirs were substituted).

? MACP No. 64/1990 was filed by Rajesh Tripathi for compensation on the injuries.

2. The aforesaid three claim petitions were taken together and were allowed by MACT/3rd Additional District Judge, Shahjahanpur (the Tribunal) on 31.5.1996 and the entire liability was fixed on the insurer of the truck.

3. The insurer of the truck filed three appeals:

? FAFO No 708/1996 was filed against the award in MACP No 63/1990.

? FAFO No 709/1996 was filed against the award in MACP No 45/1990.

? FAFO No 707/1996 was filed against the award in MACP No 64/1990.

4. The FAFO No 708/1996 and FAFO No 709/1996 were dismissed at the admission stage on 18.9.1996 and 17.9.1996 respectively. However, FAFO No 707/1996 was admitted on 18.9.1996 and the following interim order was granted in the same:

Issue notice.

Until further orders, operation of impugned order dated 31.5.96 passed by Motor Accidents Claim Tribunal in so far as the award related to M.A.C.P. No. 64 of 1990, will remain stayed, provided the appellant deposits the entire amount of such impugned award with the claims tribunal within six weeks from today. 50% of the amount of such deposit may be withdrawn by respondent No. 1 and the remaining amount will be invested by the tribunal in a most advantageous interest bearing scheme in its own name within three weeks from the date of such deposit. Statutory deposit made by the appellant will be remitted to the claims tribunal for being adjusted.

5. We have heard counsel for the parties.

6. FAFO No 708/1996 and 709/1996 were against the same award. They have been dismissed. In the aforesaid judgments, the finding that the truck driver was negligent, has been upheld. In view of this, there is no justification to interfere with the finding recorded by the Tribunal that the accident took place due to the negligence of the truck driver. This finding is also upheld.

7. In all the awards, the Tribunal has also allowed simple interest @ 14% per annum from the date of the petition before the Tribunal. The counsel for the appellant submits that the award of interest is on the higher side.

8. The award of interest in the other two claim petitions was the same. It is the same award that has been upheld by the Division Bench of this Court. In view of this, we see no justification to interfere with the rate of interest in the present appeal also. However, the same cannot be said regarding the amount of compensation.

9. In MACP No 64/1990, the Tribunal has awarded a total sum of Rs. 3,27,000/-. The counsel for the appellant submits that :

? There is a mistake in the calculation of the amount.

? The amount awarded for the pain and agony is on the higher side.

10. The Tribunal has recorded a finding that there was 40% disability with the Injured. He was a practicing advocate. Considering the circumstances of the case, the Tribunal below has awarded loss of personal income to the tune of Rs. 2,50,000/-. There is no justification to interfere on this point.

11. The injured has also taken a tractor on loan. Because of this accident, he could not pay the loan and the tractor was sold. The Tribunal has awarded a sum of Rs. 5,000/- for this loss and Rs. 10,000/- for the loss of agricultural income. There is no justification to interfere with these amounts also.

12. The Tribunal has awarded a sum of Rs. 20,000/- for the medical expenses. Nothing has been pointed out to show that this is illegal and this amount is also upheld.

13. The Tribunal has awarded a sum of Rs. 50,000/- for pain and agony. Under 2nd Schedule of the Motor Vehicles Act, 1988, the injured was entitled to Rs. 5,000/- for pain and agony. As such, this amount is reduced to Rs. 5,000/-. Thus, the injured is entitled to Rs. 2,50,000/- + Rs. 10,000/- + Rs. 5,000/- + Rs. 20,000/- + Rs. 5,000/-, totaling to Rs. 2,90,000/-. Out of this amount, an amount of Rs. 8,000/- has already been received on the basis of the fault liability, thus this amount is also to be reduced. Thus, the injured was entitled to a sum of Rs. 2,82,000/- in all.

14. In pursuance of the interim order granted by this court, the entire amount was deposited and the injured has been permitted to lift half of the amount and the remaining half has been kept in a fixed deposit. The Tribunal will refund the amount which is in excess of Rs. 2,82,000/- along with interest to the appellant. The remaining amount along with interest will be paid to the injured-claimant award holder.

15. With the aforesaid observations, the appeal is partly allowed.