
(2013) 07 AHC CK 0298
In the Allahabad High Court
Case No : F.A.F.O. No. 681 of 2002

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Sadhna Mishra and Others		RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 6 AWC 6454

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Alka Verma, for the Appellant; Manish Bajpai and Anurodh Srivastava, for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. Satish Chandra, J.—Present appeal has been filed by the appellant-insurance company u/s 173 of Motor Vehicles Act, 1988, against the judgment and award dated 16.9.2002 passed by the Motor Accident Claim Tribunal, Lakhimpur Kheri in Claim Petition No. 38 of 2000. Smt. Sadhana Misra and others v. Ram Kishore and others. The brief facts of the case are that on 8.1.2000, at about 8.30 morning Sri Chotey Lal Misra was going alongwith his son Saurabh on his motor-cycle No. V.J.K. 3075 from Lakhimpur to Sitapur. A truck bearing No. U.H.T. 999 was following them when they reached near village Aadha Chaat Jhabra, the said truck hit the motor-cycle which resulted serious injuries to both the persons. It is alleged that the truck driver was driving carelessly, rashly and negligently. Both the injured persons were taken to the District Hospital, Lakhimpur Kheri, where Sri Chotey Lal Misra has died. Being aggrieved, the claimants-respondents have filed the claim petition. The Tribunal after examining the entire evidence has awarded a total compensation of Rs. 13,42,500 alongwith the interest @ 9% per annum. Being aggrieved, appellant-insurance company has filed the present appeal.

2. With this background, Smt. Alka Verma, learned counsel for the insurance company submits that the amount awarded by the Tribunal is in excess and not

in consonance with law laid down by the Hon"ble Apex Court. For this purpose, she relied on the ratio laid down in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . She read out para 24 of the judgment which on reproduction reads as under:

In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.) the courts will usually take only the actual income at the time death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

3. She further submits that the deceased was aged about 53 years old, so no future prospects can be considered. She also submits that the Tribunal has wrongly taken full salary without deducting the tax for the purpose of computing the compensation. Agriculture income cannot be taken. Learned counsel further submits that the accident occurred due to negligence of the deceased. This is also a submission of the learned counsel that the Tribunal has erroneously put the entire liability on the appellant in spite of a fact that it was due to contributory negligence of the deceased.

4. On the other hand, learned counsel for the claimants has justified the impugned award.

5. After hearing both the parties and on perusal of the record, it appears that the accident is not in dispute. The deceased was going on a motor-cycle and from the back side, a truck hit the motor-cycle as per the eye-witness P.W. 1. Thus, there is no case of contributory negligence. The Tribunal has rightly held that truck was responsible for causing the accident. On the date of accident, both the drivers were holding valid driving licence and the truck was insured with the appellant-insurance company. At the relevant time, the policy was alive.

6. Regarding the quantum, it appears that the deceased was working as Assistant Public Prosecutor and he was aged about 53 years. His salary was Rs. 13,161 per month. By looking the future prospects, the Tribunal has taken the salary of Rs. 14,100 per month. We agree with the submission of the learned counsel that when the deceased was more than 50 years old, there should be no addition for future prospects. "Actual salary less tax" will have to be taken for the purpose of computation.

7. In the instant case, future prospects cannot be considered but fact remains that the deceased was entitled for the annual increments and other allowances. The tax @ 10% will come about to Rs. 130 per month. Thus total effect of "less tax salary" will be neutralised by increments and other allowances. So the income which was taken by the Tribunal as Rs. 14,100 per month appears reasonable in the peculiar facts and circumstances of the case.

8. The Tribunal has also taken a sum of Rs. 700 per month from the agriculture activities but no proof was submitted. Being a salaried person, the deceased was not able to devote much time for the agriculture activities and it were other co-sharers to do agriculture activities. The land and activities are continuing even after the death of the deceased. So there was no contribution of the deceased for earning agriculture income specially when no proof was given to this effect. Hence, we are of the view that income Rs. 700 per month from agriculture activities was wrongly taken by the Tribunal for the purpose of computation.

9. In the circumstances mentioned above, we took the Income of the deceased for the purpose of computation of compensation @ Rs. 14,100 per month, out of it 1/3rd will be deducted for personal expenses. Thus Rs. 14,100- Rs. 4,700 = Rs. 9,400 $\times$ 12 = 1,12,800 per annum. The age of the deceased was 53 years. So, multiplier of 11 will have to apply. Thus, the compensation will come to Rs. 1,12,800 $\times$ 11 = Rs. 12,40,800 In addition, the claimants-respondents are also entitled of Rs. 9,500 for funeral charges and consortium etc. as per Second Schedule of Section 163A of the Act. Thus, the total compensation comes to Rs. 12,50,300.

10. The Hon'ble Supreme Court in the case of Sarla Verma (supra) observed that no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased. So, claimants-respondents are not entitled for any other amount for pain etc. No medical expenses can be given in the absence of vouchers/bills etc. The motor-cycle of the deceased was also insured. So, the repairs charges will have to be taken from the concerned insurance company, but certainly not from the appellant-insurance company.

11. In the light of the above discussions, we are of the view that the claimant is entitled for total compensation of Rs. 12,50,300 alongwith the interest @ 9% from the date of filing of the claim petition. The impugned award is modified accordingly.

12. The Registry is directed to transmit the amount alongwith record, if any, deposited in this Court to the concerning Tribunal, within a period of one month, who is further directed to disburse the same within a period of three months thereafter, in terms of the award. Appellant-insurance company is also directed to deposit the entire amount with the Tribunal, if not already deposited, within a period of one month. Appeal is partly allowed as stated above.