

(2014) 10 AHC CK 0062

In the Allahabad High Court

Case No : First Appeal From Order No. 115 of 2009 and Cross Objection/Cross Appeal No. 172284 of 2012

National Insurance Company Ltd.

APPELLANT

Vs

Rukhsana Tabassum and Others

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2015) 2 ACC 134 : (2014) 11 ADJ 23 : (2015) 3 ALJ 497 : (2015) 5 ALLMR 80 : (2015) 109 ALR 644

Hon'ble Judges : Rajiv Sharma, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : A.C. Nigam, Advocates for the Appellant; Rafat Raza Khan, Arun Kumar Shukla, Pankaj Kumar Mishra, R. Sahai, Ram Singh, S. Chauhan, S. Sahai and S.K. Yadav, Advocates for the Respondent

Judgement

1. This First Appeal From Order has been filed by the appellant National Insurance Company Ltd. Through Divisional Manager Branch Office 1566/3 Church Road, Kashmiri Gate Delhi through Assistant Manager, National Insurance Company 25, M.G. Marg, Allahabad against the judgment and award dated 26.7.2006 passed by Additional District and Session Judge Court No. 7 (M.A.C.T.) Moradabad in M.A.C.T. Case No. 45 of 2003 awarding compensation to the tune of Rs. 7,70,856/- to the claimants alongwith 6% interest from the date of institution of claim petition to the claimant as per the award. Initially the awarded amount is to be paid by the National Insurance Company appellant (with a right to recover the same from the owner of the vehicle (O.P. No. 2) Ramesh Kumar S/o. Jasram. The respondent Nos. 1 to 5 filed cross appeal/cross objection No. 172284 of 2012. Facts in brief for filing the present appeal are as follows:

2. As per the facts mentioned in the impugned judgment and award dated 26.7.2006, deceased Abdul Rehman Khan was posted as police constable in U.P. Police at Police Station Saidnagli, District J.P. Nagar. On 8.11.2002 he was going

on tempo truck chesis No. T. 53607110 G-02 with other police employees on Government duty. Offending vehicle No. D.L. 1-L. 7222 was being driven very rashly and negligently by its driver. It hit the vehicle in which the deceased was travelling within the jurisdiction of village Lakhan, Pukka Road, Rashtriya Marg 24, police station Pilkhawan, District Ghaziabad at about 12 in the night in which Abdul Rehman Khan and two other persons sustained injuries and lost their lives. Deceased Abdul Rehman Khan was a police employee and he was drawing monthly salary of Rs. 6399/- per month. He was 33 years old at the time of alleged accident. The petitioners being his legal heirs preferred this claim petition before Motor Accident Claim Tribunal. Opposite party No. 2 is the owner of vehicle No. D.L. 1 L.D./7222 Tata 709. Rameshwar Singh, opposite party No. 3 was the driver of the aforesaid vehicle. Suneel Kumar was the owner of vehicle, chesis No. 57007110 J-02 tempo truck engine No. D-14005783, vehicle No. D.L. 1 LD/7222 was insured with opposite party No. 1, the Oriental Insurance Co. Ltd. The tempo truck chesis was insured through New India Insurance Co. Ltd. opposite party No. 5. As per version of opposite party Nos. 2 and 3 vehicle No. DL. 1 L.D./7222 was insured through National Insurance Co. Ltd. Opposite party No. 2 at the relevant time of accident and the National Insurance Co. was impleaded in the petition only on 17.12.2004. The claimant claimed Rs. 21/- lacs as compensation.

3. Written statement was filed on behalf of opposite party Nos. 2 and 3. They denied all the averment made in the petition and also stated in additional pleas that vehicle No. 709 1 L.D./7222 was insured with the National Insurance Company Ltd. from 18.10.2002 to 17.10.2003. They further stated that as per the First Information Report and witnesses alleged accident took place from the vehicle No. Tata 407 DL, 1 L-7722 whereas opposite party Ramesh kumar is owner of vehicle No. Tata 709, D.L., 1. D. 7222. Hence, the answering opposite parties have been unnecessarily impleaded in this petition. Opposite party No. 3 Rameshwar Singh who was driver of vehicle had valid and effective driving licence at the time of alleged accident. In fact on the fateful day his vehicle was standing by side of the road due to puncture of tyre. Sugar bags were loaded on it. Driver and cleaner had gone for repairing of puncture. Meanwhile, a vehicle No. H.P. 10g-1784 which was driven by its driver rashly and negligently hit by some unknown person. The opposite party Nos. 2 and 3 and their vehicle had no concern with the alleged accident.

4. Written statement also filed by opposite party No. 1, the Oriental Insurance Co. Ltd. which also denied the averment made in the petition and they submitted that though vehicle in question was insured by them, however the claimant are not entitled to claim the insurance from answering company. Later on a written statement was filed by opposite party No. 6 who also denied the averments made in the petition and in his initial plea they stated that the petitioners were not dependent on the income of the deceased. The age of the deceased was also denied alongwith his income. However, also accident has taken place due to rash and negligent driving of the offending vehicle. The driver of the offending vehicle

was not having a valid driving licence. The New India Insurance Company O.P. No. 5 also filed his written statement, denied the averments made in the petition and also denied the factum of accident, place, time, death of deceased etc. and further alleged that driver of the alleged tempo had no valid and effective licence and they are not liable to pay any compensation.

5. Thereafter in the claim petition issues were framed regarding the factum of accident, rash and negligent driving by the driver of offending vehicle. Issues regarding driving licence, insurance policies and quantum of compensation were framed and also afforded opportunities to adduce evidence to the parties.

6. After hearing the parties the tribunal vide impugned judgment and award partly allowed the claim petition to the tune of Rs. 7,17,856/- alongwith 6% interest from the date of filing of the petition.

7. While awarding the amount, the tribunal held that the accident has taken place on 8.11.2002 at about 12 in the night due to the rash and negligent driving of driver of vehicle Tata 709 I.L. 1.-L.D.-7222 which hit tempo truck in which constable Abdul Rehman Khan was travelling who sustained injuries and died on the spot.

8. The tribunal also held that the vehicle was driven rashly and negligently by the driver of the offending vehicle and the Court also held that the vehicle No. Tata 709 D.L. 1.D. 7222 infact was involved in the alleged accident.

9. However, while deciding issue No. 4 the tribunal held that the driver of the offending vehicle was not having a valid and effective driving licence.

10. The tribunal also held that infact the alleged offending vehicle was insured with National Insurance Company who issued the policy from 18.10.2002 to 17.10.2003 and the accident having taken place on 8.11.2002 the vehicle was insured with Insurance Company No. 6 National Insurance Company and the petitioners have wrongly impleaded the Orient Insurance Company who infact insured the vehicle previously and thus absolved the oriental insurance Company from any liability to pay and fasten the liability on National Insurance Company, Opposite party No. 6.

11. The tribunal also awarded a sum of Rs. 7,70,856/- as compensation alongwith 6% interest to the petitioners.

12. The tribunal also gave a liberty to the opposite party No. 6 National Insurance Company to recover the same from the owner of the vehicle, opposite party No. 2.

13. Feeling aggrieved with the impugned judgment and award National Insurance Company filed the present first appeal from order alongwith delay condonation application.

14. The petitioners also not satisfied with the amount of compensation also filed cross objection/cross appeal 172284 of 2012 alongwith delay condonation

application.

15. This Court condoned the delay in filing the F.A.F.O. and admit the same.

16. However, the cross appeal which was also filed by the petitioners alongwith delay condonation application was not admitted, hence we also condoned the delay in filing the cross appeal/cross objection and admit the same for hearing.

17. Heard learned counsel for the Insurance Company Sri A.C. Nigam and Sri Ram Singh Counsel for the respondent/cross objector.

18. Before hearing the argument in the first appeal from order a preliminary objection has been raised on behalf of the claimants respondent that the appeal is not maintainable. The counsel for the respondent relied upon a judgment of the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, and Division Bench of this Court in case of M/s. United India Insurance Co. Ltd. v. Smt. Maya Devi and others, 2013 (1) AICC 754.

19. It is not denied that the tribunal has given right of recovery to the appellant Insurance Co. from the owner of the offending vehicle and a perusal of the above judgment shows that where a right of recovery had been granted to the Insurance Co. to recover the amount awarded from the owner of the vehicle the appeal at its instance is not maintainable. Learned counsel for the appellant could not cite any decision to the contrary. Accordingly the appeal filed by the Insurance company is dismissed. However, the appellant would be entitled to recover the amount from the owner as held in the impugned award.

20. So far as the cross appeal/objection filed by the claimant respondents is concerned, the counsel for the respondent objector argued that the Tribunal has committed manifest error of law and as such the judgment and award of the tribunal is liable to be modified by enhancing the awarded amount of compensation.

21. Admittedly, the deceased was earning Rs. 3639/- per month from the police department which was proved by the oral as well as by documentary evidence. The learned Tribunal wrongly deducted the amount of 10% G.P.F. from the pay of the deceased without any evidence on record.

22. The learned Tribunal has wrongly deducted 1/3 amount of compensation. In fact it should be 1/4 on the basis of unit system as well as law applicable in this regard.

23. Because the learned Tribunal has not considered and awarded any amount for loss of future prospect which should be at least 50% of the income of the deceased at the time of accident.

24. That the learned Tribunal has wrongly allowed Rs. 2000/- as funeral expenses and Rs. 5000/- lost of love as the consortium to the wife of the deceased without considering the legally admissible amount to the petitioners.

25. The counsel further submitted that the Tribunal has wrongly awarded the interest @ of Rs. 6% while it should be 7 1/2 % as held by the Apex Court in various judgments.

26. The counsel for the appellant Insurance Co. submitted that the Tribunal has wrongly applied multiplier of 16 while as per the Apex Court held in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it should be 15. The counsel further submitted that the Tribunal has wrongly awarded interest @ 6% from the date of filing of the petition ignoring the fact that the present Insurance Company appellant was impleaded in the petition later on. The counsel further submitted that the Court has rightly held that the petitioner was not entitled to any future prospect.

27. The argument raised by the learned counsel for the parties have some force.

28. The first argument raised by the counsel for the cross objector respondent that the Tribunal has wrongly deducted 10% amount of the basic salary towards the general provident fund and taken the salary of the deceased at Rs. 5,952/- after deducting Rs. 387/- from the salary the amount of G.P.F. should not be deducted. In Sarla Verma's case (supra) the Apex Court held as under:

"Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."

29. In view of the observation by the Apex Court in Sarla Verma's case there should be no deduction towards G.P.F. or any other head hence the deduction of 10% of basic salary of the deceased by the Tribunal was erroneous and the salary should be taken for calculation of compensation is Rs. 6339/- round of Rs. 6340/-.

30. The next argument raised by the counsel for the cross objector respondent is that the Tribunal has erred in not considering the future prospect of the deceased. In Sarla Verma's case (supra) the Court has considered this aspect and held as under:

9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand) The income of the deceased per annum

should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier) Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation). The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.

Question (i) - addition to income for future prospects.

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In *Susamma Thomas*, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the Court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses. The decision in *Susamma Thomas* was followed in *Smt. Sarla Dixit and another Vs. Balwant Yadav and others*, , where the deceased was getting a gross salary of Rs. 1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This Court took the average of the actual income at the time of death and the

projected income if he had lived a normal life period, and determined the monthly income as Rs. 2200/- per month. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this Court assumed the income as Rs. 45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of 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 deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations 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 of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. Re: Question (ii) - deduction for personal and living expenses.

31. In view of the above discussion the deceased was less than 40 years of age and as such 50% of salary should be added in the present salary towards the future prospect. The tribunal has not considered this aspect. Applying *Sarla Verma's* case the claimants are entitled for addition of 50% of the salary drawn by the deceased at the relevant time of accident.

32. So far as the next contention regarding the multiplier is concerned, the tribunal has applied multiplier of 16 while as per the contention of the appellant Insurance Co. it should be 15. The deceased was between age group of 35 to 40 and as per the table given in the *Sarla Verma's* case the multiplier of 15 should have been applied in the instant case, therefore, the Tribunal has erred in applying the multiplier of 16 while it should be 15.

33. Lastly, regarding the deduction of personal expenses the counsel for the cross objector submitted that the tribunal should have deducted 1/4 amount from the salary of the deceased the amount which the deceased spent on himself. The tribunal has wrongly deducted 1/3 amount.

34. We are unable to accept the contention raised by learned counsel for the cross objector. Reading together the judgments of the Apex Court given in *U.P.S.R.T.C. v. Trilok Chand*, 1990 (4) SCC 362 and *Sarla Varma's* case, the 1/3

deduction is appropriate. The deceased has five dependent including wife and four minor children. As per Trilok Chand's case (supra) two minor forms one unit, hence in the present case there is only three units of the heirs which were dependent on the deceased at the time of alleged accident and the Tribunal has rightly deducted 1/3 of the amount of the salary spent by the deceased on himself. The Tribunal has not committed any error in this regard.

35. So far as the interest on the amount of compensation is concerned, the Tribunal has awarded 6% interest from the date of filing of the petition. However, as per the facts enumerated in the petition the Insurance Co. which has been fastened with the liability to pay the compensation was impleaded in the petition later on i.e. on 17.12.2004 while the petition was initially filed on 10.3.2003. Therefore, the Insurance co. should only be directed to pay the interest from the date of their impleadment i.e. from 17.12.2004.

The award thus require modification in this regard.

36. So far as the argument raised by the learned counsel for the cross objector regarding the compensation for loss of estate, loss of consortium and loss of effecton and funeral expenses are concerned the claimants cross objector has placed reliance on the decision of the Apex Court in the case of Anjani Singh and Others Vs. Salauddin and Others, and claimed excessive amount in above said heads.

37. We are unable to accept the contention raised by the learned counsel for the cross objector, vide Uttar Pradesh Motor Vehicles (Eleventh Amendment) Rules, 2011, Rule 220-A has been inserted in the Uttar Pradesh Motor Vehicles Rules. Sub-rule (4) of the said Rule 220-A is as under:

"(4). The non-pecuniary damages shall also be payable in the compensation as follows--

38. We have considered the submissions raised by learned counsel for the cross objector and also carefully gone through the law laid down in the case of Anjani Singh (supra) and also law laid down in the case of Sarla Verma (supra). Looking to the entire facts and circumstances of the case, we are of the view that in the present matter it will be appropriate to award non-pecuniary damages in accordance with the provisions contained in Rule 220-A(4) of the Uttar Pradesh Motor Vehicles (Eleventh Amendment) Rules, 2011, which has been quoted above. Thus, the claimants are entitled to Rs. 10,000/- towards loss of consortium in place of Rs. 5,000/- and also entitled Rs. 5,000/- towards funeral expenses and Rs. 10,000/- as loss of estate. However, there is no application of payment of any amount towards the expenses for litigation which has been wrongly awarded by the Tribunal.

39. Thus the cross appeal/cross objection filed by the claimants in this regard is liable to be allowed to this extent. Accordingly, the impugned judgment and award passed by the Tribunal requires modification as below:

40. The award is accordingly modified and the claimant shall be entitled to the amount of Rs. 11,66,200/- as compensation alongwith 6% interest from the date of impleadment of appellant Insurance Company in the petition i.e. from 17.12.2004 till date of final payment. This amount be deposited by the Insurance company within two months from today before Tribunal giving due adjustment to the amount already deposited. The deposited amount be paid to the claimants appellant in the proportion as given by the Tribunal in the impugned award. Rest of the terms and condition laid down by the award will remain continue. No order as to costs.