(2008) 05 AHC CK 0063

In the Allahabad High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Dr. Lata Ravi Wahaal and Others RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Citation : (2008) 4 AWC 3437

Hon'ble Judges : S.S. Chahan, J;Rajes Kumar, J

Bench : Division Bench

Judgement

Rajes Kumar and S.S. Chauhan, JJ.—This first appeal from order has been filed against the judgment and award dated 6.8.2005, passed by the Motor Accident Claims Tribunal, Lucknow in C.P. No. 514 of 1999.

2. The facts, in brief, are that on the date of incident, i.e., 30.9.1999, at about 1.30 a.m., the respondent No. 1 alongwith her husband and one Siddharth Bhatt, was going to Kanpur in her Santro car No. U.P.-32-A.A. 1188. As soon as they reached near Village Ashakheda, Police Station Sohramau, truck No. U.P.-92-B-0141, which was coming from the opposite direction and was being driven rashly and negligently, hit the car from the wrong side, on account of which the husband of the respondent No. 1 received grievous injuries and he died on the spot. The husband of the respondent No. 1 expired on account of rash and negligent driving of the truck. On these allegations, a claim petition was preferred before the Motor Accident Claims Tribunal, claiming compensation. The Motor Accident Claims Tribunal proceeded to decide the claim and made an award of Rs. 15,64,945. Feeling aggrieved with the said order, the appellant has filed this appeal.

3. The learned Counsel for the appellant has submitted that the income of the deceased has wrongly been assessed by the Tribunal. He has also submitted that the multiplier applied by the Tribunal is also high.

4. The learned Counsel for the respondents on the other hand has submitted that there is no illegality in the award passed by the Claims Tribunal. The deceased

was a person who was income tax payee and was having an independent business and in support of the claim, income tax return of the deceased was filed as evidence before the Tribunal, which showed the income of the deceased as Rs. 1,55,645, on which he paid Income Tax of Rs. 16,780. Therefore, the multiplier as contemplated under the Second Schedule has rightly been applied and the award of the Tribunal is liable to be maintained.

5. We have heard the learned Counsel for the parties and gone through the record.

6. The learned Counsel for the appellant has challenged the impugned award mainly on the quantum. He has submitted that the multiplier of 15 has wrongly been applied at the age of 44 years. To give force to his argument, he has placed reliance upon The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, and U.P. State Road Transport Corporation v. Krishna Bala and Ors. 2006 (3) TAC 3 : 2006 (4) AWC 3170 (SC). On the strength of the aforesaid cases, he insisted that in Krishna Bala (supra) at the age of 36 years multiplier of 13 was applied by the Supreme Court and accordingly the multiplier of 15 which has been applied in the present case at the age of 44 years and may be reduced.

7. The Apex Court in the case of Krishna Bala (supra) found that 22 years service of the deceased was remaining and, therefore, the multiplier of 22 adopted by the Tribunal was not correct. In the case The New India Assurance Company Limited Vs. Smt. Kalpana and Others, again the Supreme Court applied the multiplier of 13 at the age of 33 years. In the case in hand the age of the deceased was 44 years and, therefore, the death has occurred on the declining side as held in the Kalpana case (supra), wherein the Supreme Court has held that highest multiplier has to be applied for the age group of 21 to 25 years and the lowest in respect of a person in the age group of 60 to 70 years.

Considering the dictum of the Supreme Court, it seems proper that the multiplier of 13 be applied in the present case. So far as the income of the deceased is concerned, the return filed by him goes to indicate that his income was Rs. 1,55,645. The learned Counsel for the appellant has tried to file some documents which have not been filed by way of proper application. The said documents in regard to income cannot be taken into consideration and moreover the said documents were never filed in the court below. Applying the multiplier of 13 the amount of compensation to be awarded comes to Rs. 13,48,919 and award under other heads is maintained. The compensation shall be payable alongwith interest as awarded.

8. The appeal is partly allowed to the extent indicated hereinabove.

There shall be no order as to costs.

