
(1980) 07 AHC CK 0014
In the Allahabad High Court
Case No : F.A.F.O. No. 367 of 1977

New India Assurance Co. Ltd.

APPELLANT

Vs

Ghasiti Devi and Another

RESPONDENT

Date of Decision : 03-07-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 110CC

Citation : (1982) ACJ 287

Hon'ble Judges : V.N. Verma, J;K.N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Singh, J.—New India Assurance Co., Kanpur, has preferred this appeal against the judgment and order of the Claims Tribunal, Kanpur, awarding a sum of Rs. 35,500 to the Respondents.

2. On July 1, 1974, an unfortunate accident took place at about 3 p.m. on Grand Trunk Road near Kalyanpur in which a motor cyclist, namely, Dinesh collided with Ram Chandra Kushwana, a primary school teacher, as a result of which Ram Chandra Kushwana died instantaneously. One Pillai, who was an eye-witness to the accident, lodged a first information report at the police station on the same day. Smt. Ghasiti. widow of deceased, Ram Chandra Kushwana, filed a claim petition u/s 110 of the Motor Vehicles Act claiming compensation for the maintenance of herself and four minor children who were dependent on the deceased. Dinesh, who was driving the motor cycle, as well as the New India Assurance Co., the insurer of the motor cycle, were arrayed as opposite parties to the claim petition. Dinesh did not contest the proceedings but the Appellant contested the proceedings.

3. In the claim petition, Smt. Ghasiti asserted that her husband was a primary school teacher, who was drawing a salary of Rs. 225.25 per mensem and in addition to that he used to earn Rs. 75 per month by private tuition. He used to

give the whole of his salary for running the household expenditure and spent Rs. 75 upon himself. She further asserted that her husband was going on a bicycle on the left side of the road. Dinesh was driving the motor cycle in a negligent manner. He collided with Ram Chandra, deceased, who died instantaneously. The claimant further alleged that Ram Chandra, the deceased, left the claimant, three minor sons and a minor daughter who were all dependent upon him and they were being supported by the deceased. On these allegations she claimed a sum of Rs. 50,000 as compensation.

4. The insurance company contested the claim and filed a written statement pleading ignorance in respect of the allegations contained in the claimant's petition. The company admitted that the motor cycle which was involved in the accident was insured by it. It, however, took a plea of contributory negligence and challenged the quantum of compensation.

5. On the pleadings of the parties, the Claims Tribunal framed six different issues.

6. The claimant produced five witnesses in support of her claim but the Appellant-company did not produce a single witness in support of its defence. The District Judge, Kanpur, who was acting as the Claims Tribunal, awarded a sum of Rs. 35,500 to the claimant for herself and the minor children on the finding that Dinesh was driving the motor cycle in a rash and negligent manner as a result of which the accident took place resulting in the death of Ram Chandra, although he was going on a cycle on the left side of the road. There was no contributory negligence on the part of the deceased.

7. Learned counsel for the Appellant made only one submission before us, that the Claims Tribunal failed to make some deduction from, the compensation on the ground of lump sum payment. Since the sum of Rs. 35,500 was being paid to the claimant in a lump sum, a deduction should have been made at the rate of 25 per cent. It is indisputable that in assessing damages certain other factors have to be taken into consideration such as uncertainties of life and the facts of accelerated payment--that the claimant would be getting a lump sum payment, which, but for the death of her husband, would have been available to her in dribblets over a number of years. In *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, , the Supreme Court observed that allowance must be made for the uncertainty and the total figure scaled down accordingly. In the instant case the deceased might not have been able to earn till the age of his retirement for some reason or the other like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount has to be assessed taking into account these imponderable factors. That deduction should be made has not been specified either in the Act or in the Rules. It depends upon the facts of each case. In the absence of any statutory rule, the Claims Tribunal has a discretion in the matter which should be exercised on reasonable grounds. In this case the Claims Tribunal has not made any deduction nor it has recorded, any reasons for, the same. It seems that the Claims Tribunal was ignorant of this

principle and as such it did not address itself to that question. In our opinion, the Tribunal committed errors but this does not entitle the Appellant to any relief as in our opinion the Tribunal has committed errors in computing the amount of compensation and the claim amount. We would now consider each item in respect of which the Tribunal has erred.

8. As noted earlier, the claimant had pleaded that the deceased was earning Rs. 75 per mensem from private tuition in addition to his salary, firstly, the Chums Tribunal rejected the claimant's evidence with regard to the earning of Rs. 75 per month derived from, tuitions. Smt. Ghasiti appeared in the witness box and made a statement on oath in support of her contention. Her evidence was supported by the testimony of Mewa Lal (P.W. 6) and yet, the Tribunal discarded the testimony of Smt. Ghasiti on the ground that the name of the children whom the deceased was teaching had not been disclosed. The Tribunal failed to notice that Smt. Ghasiti was not cross-examined on this question. The Claims Tribunal was not justified in rejecting the testimony of Smt. Ghasiti, to make a deduction of Rs. 75, while computing amount spent by the deceased on the maintenance of his wife and children. This was wrongly done as a result of which the compensation amount was reduced. Ram Chandra's parents were alive at the time of the accident, but they had not joined the claim petition as claimants and no evidence was led by the parties that the parents of Ram Chandra, deceased, were dependent on the deceased or that they were being maintained by Ram Chandra during his lifetime, yet the Tribunal has recorded a finding that Ram Chandra must have been spending at least Rs. 100 per month towards the maintenance of his parents. On this reasoning the Claims Tribunal deducted a sum of Rs. 4,500 from the compensation calculated by it. This, in our opinion, was wholly unjustified.

9. The Tribunal exhibited complete ignorance of law in disregarding the provisions of Section 110-CC of the Motor Vehicles Act, which confers power on the Tribunal to award simple interest on the amount of compensation awarded to the claimant. Once a claim for compensation is made out the Tribunal must consider the question of interest also. In the instant case the claimant's claim was fully established and she was awarded compensation to the tune of Rs. 35,300. The Tribunal has not recorded any reason for not awarding any interest. If the Tribunal had cared to read Section 110-CC this grave error could not have been committed. The Tribunal's negligence has deprived the widow of a substantial amount by way of interest. Normally in claim cases interest is awarded at the rate of 6 per cent, on the amount of compensation. The interest has to run from the date of application till the date of payment. In the instant case, the claim petition was filed in December, 1974. The claimant was, therefore, entitled to interest at the rate of 6 per cent, with effect from December 21, 1974, up to the date of payment. The amount so calculated approximately comes to Rs. 12,000. The claimant has wrongly been denied interest, but we cannot grant any relief to her as she has not filed any appeal.

10. Lastly, the Tribunal has acted against the well established principle that cost should follow the result of the proceedings. The Tribunal itself found that the claimant was entitled to compensation and the claim made by her was proved and yet the Tribunal directed that the parties shall bear their own costs. We do not find any reason for this kind of order.

11. If we accept the contention raised on behalf of the Appellant and make a deduction at the rate of 25% on the amount awarded, a sum .of Rs. 9,000 will have to be deducted. We have, however, recorded findings that the Tribunal has committed a patent error in computing the compensation and in not awarding interest and costs of the proceedings to the claimant. Having regard to the facts and circumstances of the entire case, we do not consider it just and proper to make any further deduction from the compensation amount awarded to the claimant.

In the circumstances, we dismiss the appeal with costs.