

(2013) 05 AHC CK 0477

In the Allahabad High Court

Case No : First Appeal from Order No. 1446 of 2013

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Somwati and Others

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : (2013) 8 ADJ 354

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Vipul Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard learned counsel for the appellant.

This is an Appeal by the insurer of the Bus, bearing registration Number, DL-1-TA-5488, challenging the order dated 27th February, 2013, passed by the Motor Accident Claims Tribunal, Bulandshahr by which the Tribunal has awarded a compensation at Rs. 3,24,500.

It was the case of the claimants that on 19.12.2010, at 06:00 a.m. when the deceased Smt. Kusum was returning to her home alongwith her husband, Vipin Kumar, after attending a marriage from Village Dautai, on a motor-cycle, bearing registration number, UP-13-N-5907, driven by her husband, on Garh-Syana Road, ahead of Village Dhara, Police Station, Bahadurgarh, District Ghaziabad, the motorcycle was hit by the Bus, bearing registration number, DL-1-PA-5488. In the said accident, both, Smt. Kusum and Vipin Kumar, died on the spot. The first information report was lodged on the same day. The charge-sheet has been submitted against the driver of the Bus.

Learned counsel for the appellant submitted that though the claim petition was filed u/s 163-A of the Motor Vehicles Act, 1988, but in the absence of any negligence or fault on the part of the driver of the bus, the owner of the bus

cannot be held liable to pay the compensation. The reliance is placed on the decision of the Apex Court in the case of National Insurance Company Ltd. Vs. Sinitha and Others, . He submitted that the accident occurred on the middle of the road and there was a head on collision due to a contributory negligence on the part of the driver of the bus as well as the deceased, Vipin Kumar, who was driving the motorcycle, but no benefit of the contributory negligence has been given by the Tribunal. It is further submitted that the deceased, Kusum, was an Anganbari Karyakarti and as per the own admission was getting Rs. 850/- per month as honorarium, therefore, the income assessed at Rs. 2,500/- per month by the Tribunal is excessive.

2. I have perused the impugned order and considered the submission.

I do not find substance in the argument of learned counsel for the appellant.

The Apex Court in the case of National Insurance Company Ltd. v. Sinitha and others (supra) has held that the object for incorporating sub-section (2) of Section 163-A of the Act is that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The burden shifts on the owner or the insurance company to prove "wrongful act", "neglect" or "default". The claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the fault liability principle. It has been further held that Section 163-A of the Act is founded on the "fault" liability principle. The observations made by the Apex Court in the said judgment runs as follows:

...In our considered view the legislature designedly included the negative clause through sub-section (4) in Section 140, yet consciously did not include the same in the scheme of Section 163-A of the Act. The legislature must have refrained from providing such a negative clause in Section 163-A intentionally and purposefully. In fact, the presence of sub-section (4) in Section 140, and the absence of a similar provision in Section 163-A, in our view, leaves no room for any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defence to defeat a claim for compensation raised u/s 163-A of the Act, by pleading and establishing "wrongful act", "neglect" or "default". Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised u/s 163-A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or default....

3. In view of the aforesaid decision of the Apex Court, the burden to prove "wrongful act", "neglect" or "default" was not on the claimant and in case if the owner of the vehicle or the insurance company intended to defeat the claim of the claimants, the burden lies upon them to prove that there was no "wrongful act", "neglect" or "default" on their part, which in the present case, appellant failed to prove. The Tribunal observed that the eye-witnesses in the statements stated that the motorcycle was moving on its left side while the Bus went

towards its right side and collided with the motor-cycle. The Tribunal further observed that the site plan prepared by the Police on the day of the accident reveals that the driver of the bus gone towards its right side and hit the motorcycle, which was coming from the opposite direction and was moving on its left side. The evidences available on the record reveals that there was negligence on the part of the driver of the bus and as such the owner of the bus and the insurance company, both, failed to establish that there was no "wrongful act", "neglect" or "default" on their part. Thus, the Tribunal has rightly held the owner of the vehicle liable for payment of the compensation awarded to be indemnified by the appellant.

4. So far as the argument with regard to assessment of monthly income at Rs. 2,500/- per month by the Tribunal is concerned, the Tribunal in its order has observed that with effect from 1.4.2011, the honorarium of the Anganbari Karyakarti has been increased to Rs. 1,500/- per month. Though it is true that the date of increase in the honorarium was subsequent to the date of the accident, but the assessment of income by the Tribunal is with regard to future loss of income. Further, the Tribunal assessed the income of Rs. 1,500/- of the deceased from Swami Satyanand Saraswati Mahila Handicraft Training Institute, Narsainar, District Bulandshahr, which was being earned by imparting training of tailoring and cutting to the students by the deceased. Therefore, the assessment of the income of the deceased by the Tribunal at Rs. 2,500/-per month cannot be said to unjustified or arbitrary. In view of the discussions made above, I do not find any error in the order of the Tribunal which requires interference by this Court. In the result, the Appeal being devoid of merits, fails and is dismissed.

The office is directed to remit back the statutory amount deposited to the concerned Tribunal within a period of four weeks.