
(2007) 04 AHC CK 0189
In the Allahabad High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sudesh and Others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 4 ADJ 168 : (2007) 2 AWC 2105

Hon'ble Judges : Pankaj Mithal, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Since two relevant questions of law are involved in the present appeal, by the consent of the parties the appeal is heard on the informal papers.

2. The appeal has been preferred by the insurance company attacking the award of the court below on two grounds; firstly, the compensation, which has been awarded by fixing the salary of the deceased at Rs. 3,000, is wrongful; and secondly, the application of multiplier is not correct.

3. So far as the first point is concerned, we find from the ratio of the judgment in State of Haryana and Anr. v. Jasbir Kaur and Ors. 2003 (3) TAC 569 (SC), what would be modus for fixation of "just compensation". It has been held by the Supreme Court "gauging the relevant aspects, noted above, the monthly income is fixed at Rs. 3,000 per month, and after deducting Rs. 1,000 for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs. 2,000 per month". Worked out on the basis of multiplier of 18 and the compensation was so fixed. In the instant case, factually we find that the evidence was adduced by wife by saying that the earning of her husband was Rs. 5,000 per month. Adopting such principle of "Just compensation" salary was assessed Rs. 3,000 per month and after deducting 1/3rd for personal expenses appropriate compensation has been fixed. According to us, since the fixation of income is in lower side and there is no scope of fixation on the basis of notional

income when oral evidence is available from the wife of the deceased, the Tribunal concerned has not committed an error in fixing the compensation upon taking into account the monthly salary of the deceased at Rs. 3,000.

4. Secondly, in respect of application of multiplier we find that age of the deceased was 43 years and by applying the multiplier of 15 the compensation has been fixed. According to us, as per the Second Schedule u/s 163A of the Motor Vehicles Act, 1988, the multiplier has been correctly fixed for the people having age above 40 years but not exceeding 45 years. However, the question arose about fixation of such compensation in view of the Judgment of the Supreme Court in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, . In such judgment a two Judges' Bench of the Supreme Court wanted to make departure from the Judgment of the three Judges' Bench of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, whereunder it was held that multiplier should not exceed 18. The two Judges' Bench wanted to say that in fact Trilok Chandra's case (supra) is a guide but not invariable ready reckoner, meaning thereby the principle laid down in such judgment is not absolute but depending upon the facts and circumstances of each case. We agree with the settled proposition and rider but since we do not find any Special fact to apply a variable state of affairs, we have followed the ratio of three Judges' Bench as held in Trilok Chandra (supra) and after applying the method of calculation we hold that the decision of fixing of multiplier by the court below is appropriate.

5. Thus, we do not find any merit in the appeal and accordingly the same is dismissed. Interim order, if any, in connection with the application is vacated.

6. However, no order is passed as to costs.

7. The statutory deposit of Rs. 25,000 will be remitted in favour of the concerned Tribunal as expeditiously as possible.

Pankaj Mithal, J.

8. I agree.