

(2013) 04 AHC CK 0228
In the Allahabad High Court
Case No : F.A.F.O. No. 919 of 2013

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sunita and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 170
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2014) 2 ACC 423 : (2013) 4 ACC 30 : (2013) 7 ADJ 175 : (2013) 5 ALJ 574 : (2013) 99 ALR 433 : (2013) 3 AWC 2631

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This first appeal from order challenges the award dated 19.1.2013 passed by the Motor Accident Claims Tribunal/Special Judge (Economic Offences), Etawah in M.A.C.P. No. 769 of 2010. By the impugned award Tribunal has awarded a sum of Rs. 19,39,390 to the claimants fixing liability of payment upon appellant. The facts culled out from the record are that Dhurvire Singh @ Dhruva Singh aged about 49 years was Head Master in the primary school when he died in the accident in question which occurred on 9.10.2010.

2. The claimant-opposite parties No. 1 to 6 preferred claim petition No. 769 of 2010 before the M.A.C.T., Etawah against the appellant company as well as O.P. No. 7 the owner of Maruti Van U.P. 75B/4373 the offending vehicle in the accident. The claimants sought a compensation of Rs. 35,60,000 alongwith 10% interest per annum under Sections 166 and 140 of the Motor Vehicles Act, 1988 on account of death of husband of O.P. No. 1, and father of O.P. Nos. 2 to 4 as well as by O.P. Nos. 5 and 6 the parents of the deceased.

3. From record, it appears that on 9.10.2010 at about 5.15 p.m. when Dhurvire Singh @ Dhruva Singh was returning from Prathmic Vidyalaya, Naglava Tavaladar

Gram Sabha Madanpur. Farrukhabad where he was Head Master, the offending Maturi Van U.P. 75B/4373 coming from opposite direction being driven in rash and negligent manner came on the wrong side and collided with bicycle, which Dhurvire Singh @ Dhruva Singh was riding on left side of the road. Due to the accident serious injuries were caused to Dhurvire Singh @ Dhruva Singh on his face and head. He was admitted to Ram Manohar Lohiya, Hospital, Farrukhabad where he died after about 30 minutes. First information report was lodged by the brother of deceased at police station Mohammadabad as Case Crime No. 943/2010, under Sections 279, 338, 304A. I.P.C. Respondent No. 7 the owner of the offending vehicle did not appear in spite of the summon served upon him therefore, the Tribunal ordered to proceed ex parte against him. The claim petition was contested by the appellant New India Assurance Company Limited on various grounds by moving an application u/s 170 of Motor Vehicles Act as well.

4. The Tribunal by the impugned award partly allowed the claim for compensation of Rs. 19,39,390 alongwith 7% interest from the date of application till the date of realisation, which is under challenge before us in the F.A.F.O.

5. The learned counsel for the appellant has argued that P.W. 2 was admittedly known to the deceased and had stated that police had reached on the spot immediately after the accident and that it is apparent from the record that F.I.R. was lodged after five days of the accident by the brother of the deceased, therefore, if the police had reached on the spot immediately why F.I.R. was delayed? According to him the answer to this is that witness is lying. It is stated that as regard C.W. 1 he was a chance witness claiming himself to be an eye-witness. These witnesses had neither taken the Injured to the Hospital nor had lodged any F.I.R. Therefore, their statement are also not reliable as both the witnesses have given false statements before the Tribunal, which are against the record and as such it is proved that the vehicle in question was not involved and its implication in the accident is an afterthought.

6. Pertaining to contributory negligence, counsel for the appellant submits that no doubt accident had occurred on left hand side of the road but deceased Dhurvire Singh @ Dhruva Singh was riding on the bicycle he could have avoided the accident by going to further left side of the Patri, hence it cannot be said that there was no contributory negligence attributable to him in the accident.

7. The next contention of the learned counsel for the appellant is upon question of quantum of compensation it is submitted that deceased was Head Master in the primary school and his salary was stopped by the B.S.A. concerned since 2005 hence according to the learned counsel for the appellant the deceased had been paid salary for only 7 months in between 9.12.2005 to 9.12.2010. He was not getting any salary at the time of accident which shows that the claim of the wife that her husband was giving her Rs. 16,000 per month for household expenses is a false statement which is apparently incorrect on the face of record.

He vehemently argued that salary of the deceased Dhurvir Singh @ Dhruva Singh having been stopped by Basic Shiksha Adhikari directing him to complete some construction work, hence his notional income ought to have been taken for the purpose of quantifying the compensation.

8. He has then proceeded to contend that in order to prove that deceased was not being paid any salary at the relevant time the appellant had also moved an application for summoning the salary registers since 2005 till death of the deceased as well as his service book but the application was rejected by the Tribunal vide order dated 23.4.2002. He also placed letter dated 2.4.2012 of the B.S.A. in response to the query made by the Tribunal, which reads thus:

9. The next contention of the learned counsel for the appellant is that parents of the deceased had about 9-10 bighas of land which was being jointly cultivated by the deceased and his parents, therefore, it would be incorrect to say that parents were dependants upon the deceased for their living. In these facts and circumstances the Tribunal could not have apportioned 1/4th of the annual income of the deceased to quantify dependency of claimants and apart from it the widow is being paid Rs. 12,000 per month as family pension which Tribunal has failed to adjust and taken into consideration in quantifying the compensation. Therefore, 30% of the salary has been wrongly apportioned to the future prospect.

10. We have heard learned counsel for the appellant and considered the arguments.

11. It is apparent that P.W. 2 and C.W. 1 who are eye-witnesses of the accident had informed the police and family of the deceased through their mobile phone about the accident immediately after the occurrence. Since the police had arrived at the spot and taken charge they did not take the deceased to the hospital or lodged any F.I.R. as they had already informed the police. The police had investigated the matter and had submitted the charge-sheet against the driver of the offending vehicle. Moreover, the copy of the F.I.R. was not filed by the appellant before us for our perusal and in any case even if Information is given to the police on mobile it is sufficient to begin enquiry by the police and for taking the injured to hospital being a medico legal case F.I.R. is said to have been admittedly lodged by the brother of the deceased, who had accompanied and attended the injured Dhurvir Singh @ Dhruva Singh in the hospital where he died. The F.I.R. might have been lodged after the last rites of the deceased.

12. As regards question of contributory negligence is concerned, admittedly the offending vehicle had come on its extreme right side of the road to hit Dhurvir Singh @ Dhruva Singh who was on extreme left side of the road, there were pedestrian and people moving on the Patri, therefore, he could not move his bicycle on Patri when offending vehicle had suddenly come at him from the wrong side and had hit him without any reaction time. Further more the appellant insurance company could have summoned the driver of the offending

Maruti Van in support of his contention to establish contributory negligence of Dhurvair Singh @ Dhruva Singh (since deceased) but this was not done even the site plan does not support contention of the appellant, therefore, there is no force in the argument of the appellant in this regard.

13. The deceased was Head Master in the primary school and he was not an unemployed person, his salary was admittedly Rs. 24,400 per month, which might have been stopped for certain reasons but this would not at all by any stretch of Imagination make him the unemployed person for the purpose of computing compensation on notional income. It may be noted that neither any disciplinary or departmental proceeding were pending against the deceased and nor his services had been terminated. On the contrary his employment and salary is proved from record. It appears that B.S.A. had stopped the payment of salary admittedly for the reason that the construction had been made but window had not fastened to the walls. This is apparent from the statement of P.W. 3 noted by the Tribunal in its judgment while deciding issue No. 4 where the Tribunal had considered it thus:

14. Now the arguments of the appellant pertaining to dependency and deduction for personal and living expenses of the deceased are considered. Even if the father of the deceased is not a dependant on the deceased, then also the number of dependants are more than 4, i.e., five. We may refer to the law laid down and settled in this regard in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it is held therein that where the number of dependants is between four to six, 1/4th deduction is permissible. Therefore, in view of the ratio laid down in the case of Sarla Verma (supra) the Tribunal has rightly deducted 1/4th from annual income of the deceased for his personal and living expenses.

15. At this stage we would also like to note the contention of learned counsel for the appellant regarding non-adjustment of pension of Rs. 12,500 being received by the widow which is alleged not to have been considered by the Tribunal. In this regard, suffice it to say that the Tribunal appears to have considered this fact by lowering the multiplier of "13" which is applicable in the instant case to "10", therefore, in our considered opinion substantial justice had been done to the parties. The contention of the learned counsel for the appellant regarding additional future prospect are also covered by the judgment of Sarla Verma (supra) as admittedly the age of the deceased was 49 years, i.e., less than 50 years, hence in accordance with the ratio laid therein the Tribunal has not committed any illegality.

16. For the reasons stated above, we do not find any merit in the appeal, which is accordingly dismissed. Office is directed to remit the statutory amount deposited by the appellant to the Tribunal concerned within three weeks.