
(2014) 09 AHC CK 0222

In the Allahabad High Court

Case No : First Appeal From Order No. 850 with Cross Objection No. Nil of 2008
and First Appeal From Order No. 970 of 2008

New India Assurance Company Ltd.

APPELLANT

Vs

Sheela Maherey
U.P. State Road Transport Corporation
Vs Shila Mahere

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166

Citation : (2014) 9 ADJ 450 : (2014) 107 ALR 440

Hon'ble Judges : Rajesh Kumar Agrawal, J;Om Prakash-VII, J

Bench : Division Bench

Advocate : Ramesh Singh, K.L. Grover and M.M. Sahai, Advocate for the
Appellant; P.K. Sinha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash-VII, J.—The above mentioned First Appeals From Order and cross objection have been filed against the judgment and order arising out of the same accident. All the appeals and cross objection have been heard together, therefore, they are being decided by a common judgment and order.

2. Appeal No. 850 of 2008 New India Assurance Company Ltd. Vs. Smt. Sheela Maherey & Others has been directed by New India Assurance Company Ltd. and the Appeal No. 970 of 2008 has been directed by U.P. State Road Transport Corporation against the judgment and order dated 18.12.2007 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Court No. 5, Etawah in M.A.C.P. No. 80 of 2003, Smt. Shila Mehery and Others Vs. U.P. State Road Transport Corporation & Others whereby the Tribunal has allowed the claim petition filed by the claimants for a compensation of Rs. 20,91,250/-alongwith 6% simple interest per annum from the date of filing of the claim petition till its realization fastening the liability upon the appellant-U.P. State Road Transport Corporation and New India Assurance Company Ltd. in proportion of 50:50.

Cross objection has been filed by the claimants in First Appeal From Order No. 850 of 2008 for enhancement of the compensation.

3. Facts in brief for filing the present appeal, are as follows:

On 19.1.2002 Kamla Kant Mehery aged about 42 years, Manager of R.B. Automobiles was returning from Agra to Etawah after completing the work of automobile on the vehicle No.U.P. 75 C-1775. The vehicle was being driven by one Sunil Kumar. Other passengers were also sitting in the car. At about 8.30 p.m. as and when they reached near the Makkhanpur the other vehicle belonging to U.P. Roadways Bus No.U.P. 76 C -849, being driven by its driver rashly and negligently, coming from the opposite direction dashed to the car without blowing horn. Therefore, the deceased Kamla Kant Mehery received serious injuries. At first he was taken to Firozabad District Hospital and where from he was referred to Agra. The deceased was admitted in Kayani Hospital at Agra and was under treatment since 20.1.2002 to 30.1.2002. Thereafter he was referred to Delhi for better treatment where he was admitted in Apollo Hospital. During the treatment on 5.2.2002 at about 4.15 p.m. he succumbed to his injuries.

4. F.I.R. was lodged on 20.1.2002. As per claim petition accident was the result of sole rash and negligent driving of the offending vehicle-Bus. There was no any negligence on the part of the car driver. Claimants have made parties to the owner and the insurer of both the vehicles. The deceased was earning Rs. 15,000/-per month as Manager. Earlier he was employed as Manager in the Central Bank of India, Agra. He left the service of the Central Bank of India. Claimants were depended on the income of the deceased at the time of the accident. It was also the case of the claimants that Rs. 4.00 lacs had been spent on the treatment of the deceased. Thus, compensation on account of untimely death of the deceased was claimed by the claimants.

5. U.P. State Road Transport Corporation filed the written statement before the Tribunal and denied the happening of the accident. It was averred in the written statement that the driver of the car driving rashly and negligently, tried to overtake the bus from the wrong side and therefore, dashed to the bus from its left side and the car was turtled. There was no negligence on the part of the bus driver. The accident is the result of sole rash and negligent driving on the part of the driver of the car.

6. The owner of the car also filed the written statement, accepting the contents of para No. 1 to 7 and 9 to 17 of the claim petition and also averred that the accident was the result of sole rash and negligent driving of the driver of the bus. The deceased was earning Rs. 15000/-from his firm and car was validly insured at the time of accident with New India Assurance Company Ltd. The driver was also possessing a valid driving license. The New India Assurance Company Ltd. in its written statement denied the averments of the claim petition and specifically stated that accident is the result of sole rash and negligent driving of the bus driver.

7. On the basis of the pleadings of the parties the Tribunal has framed following issues:

8. Parties were afforded opportunity to adduce the evidence. Claimants have examined P.W. 1, Sunil Kumar who was driving the car, P.W. 2 Smt. Shila Mehery, wife of the deceased & P.W. 3 Adarh Kulshreshtha. Claimants have also filed income tax return, challan form of Permanent Account Number, salary certificate and other papers.

9. U.P. State Road Transport Corporation and other opposite parties did not examine any witness in oral evidence. Papers relating to the car have been filed before the Tribunal. U.P. State Road Transport Corporation has also filed certain papers.

10. Tribunal after hearing the parties allowed the claim petition worth Rs. 20,91,250/-alongwith 6% simple interest per annum, fastening the liability of both the vehicle owners in equal proportion. Since the vehicle in question was found validly insured at the time of accident with the Insurance company, therefore, the liability fastened upon the owner of the car was directed to be indemnified by the New India Assurance Company Ltd.

11. Feeling aggrieved with the impugned judgment and award the appeals and the cross objection have been filed.

12. We have heard learned counsel for the parties and perused the entire record.

13. Sri M.M. Sahai learned counsel for the U.P. State Road Transport Corporation has argued that there was no rash and negligent driving on the part of the driver of the offending vehicle-bus. The car driver driving the car rashly and negligently, tried to overtake the bus from the wrong side, therefore, the accident took place. Reference was given of the finding observed by the Tribunal while deciding the issue regarding rash and negligent driving. It was further argued that the Tribunal has illegally fastened the liability to pay the compensation amount equally. It has also been argued that the Tribunal has deducted only 1/4th income towards personal and living expenses of the deceased. Reference has been given of the law laid down by the Apex Court in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and submitted that there must be a deduction of 1/3rd of the annual income towards personal and living expenses of the deceased for calculating the compensation.

14. Assailing the finding recorded by the Tribunal on the point of annual income it has been argued that income tax return filed by the claimants are not conclusive proof for assessing the annual income of the deceased for the relevant year.

15. Sri Ramesh Singh, learned counsel appearing on behalf of appellant-National Assurance Company Limited has argued that the accident is the result of sole rash and negligent driving of the driver of the bus. The Tribunal wrongly fixed the liability of the driver of the car also. It was specifically argued that both the

vehicles have been damaged from its left side which clearly indicates that the driver of the offending vehicle bus had taken to the bus on extreme wrong side dashing the car, moved outside the road on kachchi patri and also collided with the tree. It has further been argued that the deceased was not covered under the insurance policy because no any premium for the occupant of the car has been deposited by the owner and the policy issued by the Insurance Company was not comprehensive policy. Thus referring the arguments advanced by the learned counsel for U.P. State Road Transport Corporation with regard to the deduction of the annual income towards personal expenses of the deceased, multiplier used by the Tribunal and also the annual income assessed by the Tribunal, prayer has been made to allow the appeal and discharge the Insurance Company from any liability.

16. Sri R.K. Porwal, counsel for the claimants has argued that the deceased was occupant in the car and policy issued by the Insurance Company covers the risk of the deceased as the policy was a comprehensive policy. It has further been argued that the Tribunal has rightly deducted only 1/4th income from the annual income of the deceased towards personal and living expenses. Multiplier used to work out the compensation is also in accordance with law. There was clear evidence regarding the income of the deceased, therefore the income assessed by the Tribunal can not be said to be erroneous. Shri Porwal has also argued that the Tribunal has erred in not awarding the compensation towards future prospect. Reference was given of the law laid down by the Apex Court in *Rajesh and Others Vs. Rajbir Singh and Others*,

17. In support of the deductions made by the Tribunal it was argued that for counting the dependent family members, 2 units for one adult member and 1 unit for one minor member shall be taken into consideration.

18. It is also submitted that the interest awarded by the Tribunal is on lower side. Thus prayer has been made to allow cross objection enhancing the compensation by modifying the impugned judgment and award.

19. We have considered the submissions of the learned counsel for the parties and perused the entire record.

20. It is admitted fact that both the offending vehicles bus and car were present on the spot at the time of accident. The deceased was travelling in the car, sitting on the left side and was returning from Agra to Etawah. The offending bus was going to Agra. This is also established from the evidence adduced before the Tribunal that both the vehicles collided from its left front side. Technical examination report also supports this fact. Claimants have examined P.W. 1 Sunil Kumar, who was driving the car at the time of accident. P.W. 2 Smt. Shila Mehrey, wife of the deceased & P.W. 3 Adarh Kulshreshtha are not the eye witnesses. UPSRTC and the owner and insurer of the car have not examined any witness.

21. Police after investigation submitted charge sheet against the driver of the

offending vehicle-bus. Information was said to be given on the part of the bus conductor to the authorities regarding the accident, but the same has not been proved before the Tribunal. The Tribunal while deciding the issues no. 1 & 2 has concluded that the accident took place due to rash and negligent driving on the part of the drivers of both the vehicles. Therefore, liability has been fastened upon the owners of both the vehicles in equal proportion.

22. The submission of the learned counsel for the appellant-UPSRTC that there was no any rash and negligent driving on the part of the driver of the bus is concerned, P.W. 1, Sunil Kumar examined on behalf of the claimants has stated before the Tribunal that driver of the bus driving rashly and negligently took it on wrong side hitting the car in its left front side and thereafter the bus was moved towards kachcha patri extremely on the wrong side and collided with the tree. This fact has not been controverted by any evidence by the appellant-UPSRTC. Emphasising this observation made by the Tribunal in the impugned judgment and order the learned counsel for the Insurance Company has argued that the Tribunal has wrongly concluded that there was rash and negligent driving on the part of the car driver. As far as this contention is concerned, both the vehicles were coming from opposite direction and the left front side of both the vehicles were damaged. This situation will only arise when the drivers of both the vehicles have moved their vehicles on their wrong side.

23. In the facts and circumstances of the case and on the basis of the evidence adduced by the parties, the Tribunal observation that both the drivers were driving the vehicles rashly and negligently, can not be said to be illegal or perverse. Filing of the charge sheet against the driver of the bus only will not be sufficient to set aside the observation made by the Tribunal which is based on the analysis of the entire evidence available on record and is finding of fact. No believable evidence is available on record to hold that drivers have made effort to avoid the accident. Therefore, the last opportunity theory to avoid the accident can also not be applied in the present matter. Thus, contentions raised by the learned counsel for the appellants in respect of contributory negligence, are not acceptable and the Tribunal's finding do not require any interference.

24. As far as the insurance of the offending vehicle-car is concerned, copy of the insurance policy filed by the party is available on record, which clearly indicates that there was comprehensive insurance policy. Therefore, the contention raised by the appellant-Insurance Company that the deceased was occupant in the car and is not covered with the Insurance policy, is not acceptable. The vehicle in question was insured with the appellant on the date and time of accident as comprehensive insurance and the deceased is also included in the policy.

25. The Tribunal has assessed the age of the deceased at the time of accident as 44 years. This observation is based on the documentary evidence, therefore no interference is required in this respect.

26. As far as the multiplier used in the matter is concerned, the Tribunal to work

out the compensation has applied the multiplier of 15. As per law laid down in the case of Sarla Verma (Supra) for the age group of the deceased the multiplier of 14 should have been adopted. Similarly, the Tribunal has deducted the annual income in lieu of the personal expenses of the deceased applying the unit system, following the law laid down by the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and has deducted Rs. 45,000/- on this account. 1/4th amount of Rs. 45,000/- has also been deducted to work out the compensation in lieu of expenses incurred on conveyance etc. Thus, the total deduction from the annual income has been made to Rs. 56,250/-. In the Motor Vehicles Act Second Schedule has been added in the year 1994, applicable to the claim cases filed u/s 163-A of the Motor Vehicles Act. Tribunal has also been authorised by several pronouncements of the Apex Court that guidelines of the Second Schedule appended with Motor Vehicles Act can be taken into consideration to decide the claim petition filed u/s 166 of Motor Vehicles Act. Second Schedule of Motor Vehicles Act provides 1/3rd deduction. Thus the Tribunal ought to have deducted 1/3rd amount of the annual income in lieu of personal and living expenses of the deceased. If the law laid down by the Apex Court in Sarla Verma case (Supra) is also taken into consideration then also 1/3rd income from the annual income of the deceased should have been deducted in lieu of personal and living expenses.

27. The Tribunal while assessing the annual income of the deceased has not taken into consideration this fact that the deceased has taken voluntary retirement from the Central Bank of India on 30.6.2001 and again was re-employed at A.R. Automobile, Etawah in a private company (not a permanent employment) in the month of September, 2001. Income Tax return filed before the Tribunal was for the assessment years 2000-01, 2001-02, that means for the financial year 1999-2000 and 2000-01. No income tax return has been filed regarding financial year 2001-02. Taking the average of disclosed income the deduction of income tax, we are of the view that the annual income of the deceased should be Rs. 1,50,000/-.

28. Learned counsel for the claimants filing the cross objection has argued that no compensation amount has been awarded in lieu of future prospect. While the Apex Court in Rajbir Singh & Others (supra) case has held that compensation on account of future prospect can also be awarded in case of self-employed persons. The Supreme Court in the case of Sarla Verma (supra) has propounded the various theories to award compensation in lieu of future prospect but it was only applicable to certain classes of persons and not for self-employed persons.

29. Considering the entire facts and circumstances of the case and comparing the arguments advanced by the parties with the facts of the present case and also with the settled legal position, we are of the view that the amount of compensation arrived at by the Tribunal can not be said to be excessive, unreasonable, unjust or meagre. If on the basis of the observation recorded here in above the compensation is calculated applying the multiplier of 14, deducting

1/3rd income from the annual income i.e. Rs. 1,50,000/-and also giving some benefit of future prospect having regard to the nature of the employment then also there would be no any substantial difference in the amount awarded by the Tribunal. In the facts and circumstances the amount awarded by the Tribunal is just, reasonable and adequate and does not require interference.

30. Whatever bills in regard to the expenses incurred by the claimants on the treatment of the deceased have been produced before the Tribunal and have been proved, the Tribunal has allowed, therefore, no interference is also required at this stage.

31. As far as the interest rate allowed by the Tribunal is concerned, claim petition has been decided in the year 2007. U.P. Motor Vehicles Act Amendment Rule has been made applicable from the date 26.9.2011. Therefore, we are of the view that the Tribunal has rightly fixed 6% simple interest per annum on the basis of prevalent rate. Therefore, there is no need to disturb the finding arrived at by the Tribunal in this regard.

32. On the basis of the discussions made herein above, we are of the view that the appeal filed by the appellant-UPSRTC and the New India Assurance Company lacks merit and are liable to be dismissed. Similarly the cross objection filed by the claimants also lacks merit and is liable to be dismissed.

33. Accordingly, the First appeal from order No. 850 of 2008 with cross objection No. Nil of 2008 and First appeal from order No. 970 of 2008 are hereby dismissed.

34. There is no order as to costs.