(2013) 01 AHC CK 0407

In the Allahabad High Court

Case No : First Appeal From Order No''s. 301 and 621 of 2001

Oriental Insurance Co. Ltd. and Another APPELLANT

Vs

Smt. Asha Batra and Others RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 1 AWC 616

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Anil Kumar Singh and Indra Pratap Singh, for the Appellant; Bireshwar Nath and R.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Devi Prasad Singh and Satish Chandra, JJ.—Both the appeals u/s 173 of the Motor Vehicles Act 1988 have been preferred against the judgment and award dated 19.3.2001 passed in Motor Accident Claim Case No. 7 of 2000 by the Motor Accident Claims Tribunal/IXth Additional District Judge, Faizabad. The appeal No. 301 of 2001 is against the compensation while the Appeal No. 621 of 2001 is for the enhancement of the compensation. The controversy relates to an accident occurred on 2.11.1999 at about 7.30 a.m. in the morning when the deceased Basudeo Batra was on the way on his Scooter No. U.P. 42/2772 and when reached to Naka Bypass, City and District Faizabad, a Truck No. U.P. 78-T/4045 hit the scooter. The Truck was driven rashly and negligently. In the accident, Basudeo Batra suffered grievous injuries and later succumbed to it. The deceased Basudeo Batra was a shopkeeper and at the time of death, he was aged about 34 years.

2. While assailing the impugned award, it has been submitted by learned counsel for the appellant-insurance company that it is a case of contributory negligence and compensation awarded is excessive with interest of 12%. The Tribunal recorded a finding that the accident occurred at Naka Bypass on account of rash

and negligent driving of the Truck in question. The finding recorded by the Tribunal does not seem to suffer from any perversity. It was incumbent on the driver of the Truck to keep slow at the bypass. From the evidence, it reveals that the Truck was driven rashly resulting in accident in question. Accordingly, we do not find any reason to shift the liability on the deceased, who suffered because of rash and negligent driving of the vehicle.

3. So far as the compensation is concerned, the Tribunal had taken into account the income of the deceased in terms of Income Tax Return.

4. While assailing the impugned award, learned counsel for the appellant-insurance company submits that the shop is still operative and the income tax return should not have the basis for awarding the compensation. Argument advanced by the learned counsel for the appellant-insurance company seems to be misconceived. In case, the deceased is alive, it is expected that with the passage of time, the income would have increased manifolds in ordinary course of business. In recent judgment in Santosh Devi Vs. National Insurance Company Ltd. and Others, , their lordships of Hon''ble Supreme Court ruled that future prospect should have taken into account while awarding the compensation.

5. However, in the present case, the compensation as assessed on the basis of income of the deceased in terms of the Income Tax Return of 1999-2000, seems to be appropriate and well reasoned. Accordingly, the compensation awarded by the Tribunal neither excessive nor unreasonable. However, the Tribunal awarded the compensation alongwith interest of 12%, which seems to be excessive, requires reduction.

6. Accordingly, we allow the appeal partly and modified the award to the extent of interest is concerned. The claimant shall be entitled for the interest @ 9%, which ordinarily awarded by this Court and even by Hon''ble Apex Court in so many judgments.

7. In view of above, we partly allow the appeal No. 301 of 2001 and reduce the interest to the extent of 9% from the date of filing of the application before the Tribunal till it is paid. The appeal No. 621 of 2001 is dismissed accordingly.

8. Let entire/remaining compensation amount be deposited before the Tribunal by the appellant-insurance company alongwith 9% interest within a period of two months from today. The Tribunal shall release the same in favour of the claimants expeditiously say within a period of three months in terms of the modified award. The amount deposited in this Court shall be remitted by the Registry to the Tribunal within a period of one month. Both the appeals decided accordingly.