(2013) 07 AHC CK 0074

In the Allahabad High Court

Case No : F.A.F.O. No''s. 523, 524 and 525 of 2001

Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Devki @ Shiv Devi Bajpai and Others RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 3 ALJ 73 : (2013) 6 AWC 6451

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Anil Srivastava and C.H. Mishra, for the Appellant; I.B. Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajiv Sharma and Dr. Satish Chandra, JJ.—All the three appeals have been filed by the appellant-insurance company u/s 173 of Motor Vehicles Act, 1988, against the common judgment and order dated 26.7.2001 passed by the Motor Accident Claim Tribunal, Sitapur, in Claim Petition Nos. 85, 86, and 87 of 2000, where the Tribunal has awarded compensation of Rs. 1,80,000, Rs. 2,04,000 and Rs. 6,65,652 respectively, against the appellant-insurance company. Not being satisfied, these appeals have been filed by the appellant-insurance company. The brief facts of the case are that on 10.2.2000. Sri Devi Sahai Bajpai was going from Village Sitapur to Hardoi on his motor-cycle U.P.-34-3039 alongwith his unmarried daughter Kumari Kanchan and son Bal Krishna. When they reached near Dalatpur Puliya, from the opposite side, a Truck No. H.R.-38/2293 was coming, whose driver was driving it rashly, negligently and carelessly. The Truck hit the motor-cycle, which resulted the death of all the three persons on the spot. Later, F.I.R. was lodged in the Police Station Rampur Kala. Being aggrieved, the claimants have filed three claim petitions, where the compensation in each case, mentioned above, was awarded against the insurance company.

2. With this background, Sri Anil Srivastava, learned counsel for the appellant-insurance company submits that the deceased was working as a security guard

in Kishan Sahakari Cheeni Mill. The deceased also earned Rs. 2,000 per month by selling milk, but to this effect, no documentary evidence was furnished before the Tribunal. He also submits that due to the extreme winter season in the morning, there was heavy fog and no visibility was there at all. He also submits that on the motor-cycle, three persons were traveling against the law. So, the deceased also contributed towards negligence. Compensation to the third persons cannot be awarded. So, the impugned order is likely to be set aside.

3. It is also a submission of the learned counsel that the interest @ 10% is on higher side. Lastly, he made a request to set aside the impugned order passed by the Tribunal.

4. On the other hand, Sri I.B. Singh, learned counsel for the claimants-respondents has justified the impugned order.

5. After hearing both the parties and on perusal of the record, it appears that the accident is not in dispute. On the date of the accident, the truck in question was driving by Sri Nazim Hussain, who was holding a valid driving licence, and he has accepted the accident. The truck was owned by Sri Babu Hussain, which was duly insured with the appellant-insurance company and on the date of the accident, policy was alive. The deceased was also holding a valid driving licence.

6. Regarding the two pillion rider, it may be mentioned that this is a matter of Traffic Police, but the insurance company cannot escape its liability. No plea was taken before the Tribunal. Moreover, claim is not against the insurance company, who insured the motor-cycle.

7. Regarding the quantum, it appears that the deceased was working as a security guard and his monthly salary was Rs. 4,267. In addition, he was earning about Rs. 2,000 per month income from the dairy business. In these circumstances, the Tribunal has taken the total income for Rs. 4,267, after deducting 1/3rd, for the purpose of computation. By looking the age multiplier of 13 was rightly applied by the Tribunal. Similarly, the child Bal Krishna, was a student of High School and aged about 15 years. His income was considered as Rs. 1,000 per month and multiplier of 15 was applied. Thus, the compensation of Rs. 1,80,000 was awarded to him.

8. Regarding Kumari Kanchan, it appears that she was aged about 20 years old and a student of B.A. She was also earning from the Computer Classes, but her income was taken only Rs. 1,000 per month. The multiplier of 17 was applied by looking her age.

9. Needless to mention that the benefit of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, cannot be given in the instant cases, as neither cross-objections nor appeals have been filed by the claimants for the enhancement.

10. In these circumstances, we have no option except to uphold the compensation awarded by the Tribunal in all the three appeals. However, the interest @ 10% is looking on higher side specially when the Tribunal has

observed that the interest may be awarded from 6% to 18%.

11. It may be mentioned that awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity as per the observation made by the Hon''ble Supreme Court in the following cases--

(a) Parikh Engineering and Body Building Company Limited Vs. Smt. Pramila Karwa and Others, .

(b) Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, and

(c) Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, .

12. In view of above, we deem it fit that the interest @ 8% will have to be awarded in the instant cases by looking the fixed deposit rate in the Bank at the relevant time. Hence, the claimants are entitled for the interest @ 8% on the compensation awarded by the Tribunal. For this purpose, impugned order is modified.

13. The registry of this Court is directed to transmit the amount and record, if any, deposited in this Court to the concerning Tribunal, within a period of four weeks. The Tribunal is further directed to disburse the compensation within a period of three months, thereafter in terms of the award. The appellant-insurance company is also directed to deposit the entire amount, after adjusting the amount, if already deposited, in the concerning Tribunal, within a period of one month. In the result, all the three appeals filed by the appellant-insurance company is partly allowed as stated above.

