(2013) 01 AHC CK 0053

In the Allahabad High Court

Case No : F.A.F.O. No. 1257 of 2011

Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Noor Banoo and Others RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2013) 2 AWC 1856

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Anil Srivastava, for the Appellant; Balendu Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar Tripathi-II, J.—Heard Sri Anil Srivastava learned counsel for the appellant and Sri Balendu Shekhar learned counsel for the opposite parties. The present first appeal from order has been filed by the Oriental Insurance Company Ltd. against the judgment and award dated 29.9.2011 passed by Motor Accident Claims Tribunal/Additional District Judge Court No. 3, Lucknow, by which Motor Accident Claim Case No. 567 of 2009 was partly allowed by learned Tribunal below and awarded Rs. 3,11,700 to be paid by the Oriental Insurance Company Ltd.

2. It has been mentioned in the claim petition that claimant''s daughter Kumari Heena died on 23.10.2009 at about 9.00 a.m., while she was going to do domestic work in Indra Nagar and when she reached near in front of Sushma Hospital Truck No. U.P. 41T-0261 being driven rashly and negligently by its driver hit Kumari Heena due to which she become seriously injured and succumbed to the Injuries, while shifting to the hospital. It was mentioned in the claim petition that she was earning about Rs. 3,300 (Rupees three thousand three hundred) per month by doing household core in several houses. The claim petition was filed for compensation of Rs. 8,00,000 (Rupees eight lakhs only).

3. Opposite party No. 1 truck owner has filed written statement denying the accident being occurred due to the rash and negligent driving of the driver. It was also mentioned that the truck was insured from the Oriental India Insurance Company Ltd. so the liability to pay is of the insurance company.

4. Oriental Insurance Company Ltd. filed the written statement stating that the truck driver was not having proper and valid driving licence at the time of accident. Registration certificate, road permit and fitness certificate, has also not been filed. Hence, the insurance company is not liable to pay any compensation. The vehicle was being plied in contravention of the Insurance Policy. The accident occurred due to the negligence of the victim as being minor she was crossing the road without any guardian.

5. Learned Tribunal below framed the following issues:

(i) Whether Truck No. U.P. 41T-0261 being driven rashly and negligently by its driver, hit deceased Kumari Heena on 28.10.2009 at about 9.00 a.m. in front of Sushma Hospital in the vicinity of P.S. Gomati Nagar, District-Lucknow due to which she received serious injuries?

(ii) Whether the vehicle driver was having valid and effective driving licence at the time of accident?

(iii) Whether the Truck No. U.P. 41T-0261 was insured with the insurance company?

(iv) Whether the claimants'' are entitled to any amount of compensation and if yes how much or from whom?

(v) Whether Truck No. U.P. 41T-0261 was being plied in conformity with the provisions of the Insurance Policy if yes its effect?

6. Claimants examined Ashiq Ali as P.W. 1, and Rajjab Khan @ Rajjab Ali as P.W. 2. Apart from this, photocopy of F.I.R. alongwith certified copy of F.I.R., post-mortem report, site plan and charge-sheet was also filed. Opposite parties have not adduced any oral evidence and have filed copy of first information report, insurance document of the Truck, photocopy of driving licence, road permit, tax paid receipt and pollution control certificate were filed.

7. Learned Tribunal after going through the evidence on record and hearing the argument, decided issue No. 1, in favour of the claimants, issue Nos. 2, 3 and 5 also in favour of claimants and held that claimants are entitled to receive Rs. 3.11,700 as compensation alongwith Rs. 2,000 for funeral expenses and Rs. 2,500 for loss of estate. The liability to pay this amount was fastened on Oriental Insurance Company Ltd. Feeling aggrieved this claim petition has been filed by Oriental Insurance Company.

8. It was argued from the side of the insurance company that since income of deceased was not established, notional income should be assessed to be Rs. 15,000 per year at the time of incident. Deceased (Heena) has been alleged to

be of 18 years and her mother''s age has been indicated to be 32 years so when Heena was born her mother''s age was 13 years. i.e., physical impossibility so instead of sixteen, multiplier of fifteen should have been adopted. It was also argued that deceased was a unmarried and claimants were her parents so dependency should have been determined 1/2 or 1/3 instead of 2/3. The deduction would depend upon the facts and circumstances of the each case. The learned Tribunal failed to appreciate the same which has resulted in miscarriage of justice. Tribunal has no jurisdiction to award any penal interest as has been erroneously awarded in this case, Tribunal has passed award in violation of Schedule 2nd of Section 173 of the Motor Vehicles Act, 1988 and excessive and exaggerate award has been passed.

9. Learned counsel for the respondent has argued that by the principle laid down in the Laxmi Devi''s case, 2008 (2) TAC 394 (SC), the annual income should be treated to be Rs. 3,000 per month. Learned Tribunal has rightly held the monthly income to be Rs. 3,000 per annum, so award is perfectly justified.

10. A perusal of the award reveals that learned Tribunal has fixed her monthly income to be Rs. 24,000 per month treating here that assuming deceased might to be taking six days leave from the work so he has deducted Rs. 600 from the assessed daily income Rs. 100 per day. Since there is no application for enhancement of the award so in view of Laxmi Devi''s case, 2008 (2) TAC 394 : 2008 (5) AWC 2346 (SC), we do not find any illegality in fixing the monthly income and thus, the yearly income calculated to be Rs. 28,800 after reducing the deduction of wages after leave is perfectly justified.

11. The next limb of arguments was that the mother''s age is alleged to be 32 years while Heena''s age was 18 years so it is physical impossibility that is her mother gave birth to Heena at the age of 14 years. In the postmortem report her age is assessed to be 17 years. Women have tendency to tell their age on the lower side. In second schedule 17 is multiplier used for age group-30 to 35. If we assess her mother''s age to be 34 years then at the time of birth of deceased (Heena), her mother''s age must have been 17 years, that is quite acceptable. In view of this, where Muslim allowed the girls to be married at the age when the girls reach the age of puberty then no presumption that her mother must have been more than 35 years of age as has been argued by learned counsel for the appellant can be drawn. In our view proper multiplier has been used.

12. The last limb of the argument that Tribunal has no right to award the penal interest. Perusal of the award reveals that Tribunal has directed the Oriental Insurance Company Ltd. to deposit the awarded amount within two months from the date of order @ 6% per annum simple interest. It has also been mentioned that in case of failure of payment, @ 9% interest shall be payable.

13. Learned counsel for appellant has supported his claim on the basis of decision of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, : 2006 (1) ACCD 339 : 2004 (2) AWC 945 (SC), Hon''ble Apex Court in that decision has

held that:

Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the New Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of Interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

14. The another argument was learned Tribunal shall deduct one and half as her personal expenses. The girl who died was engaged in doing household core in other persons house and was earning from it so the family of the deceased belongs to lower income group and in view of this, it cannot be said that the girl instead of supporting her family would be spending one and half on her personal expenses and learned Tribunal has correctly deducted 1/3rd of her income as her personal expenses, as per, the Second Schedule of the Motor Vehicles Act. In view of this, we find that income, multiplier and deduction have correctly been assessed and applied by learned Tribunal, the award needs no interference.

15. From the above discussion we are of the view that the appeal is liable to be dismissed and is hereby dismissed. The statutory deposit in this Court shall be sent back to the Tribunal for disbursement to the claimants, as per. direction given in the award, if not earlier sent by the office. Hon''ble Apex Court itself in the case of National Insurance Co. Ltd. v. Keshav Bahadur (supra) has held that the insurer cannot withheld, the awarded amount indefinitely. In view of above, the Tribunal cannot enhance the interest from retrospective effect. In the instant case, Tribunal has awarded 9% of interest after failure of depositing the entire amount within two months from the award and the penal interest has been awarded after the due date depositing the awarded amount is lapsed. In view of this the decision rendered by Apex Court mentioned above is not applicable in the case.

