
(2017) 01 AHC CK 0291

In the Allahabad High Court

Case No : First Appeal From Order No. 1361 of 2005

Oriental Insurance Co Ltd.

APPELLANT

Vs

Smt. Shiv Devi

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) 121 ALR 85

Hon'ble Judges : Pankaj Mithal and Shashi Kant, JJ.

Bench : Division Bench

Advocate : S.K. Kakkar, Advocate, for the Appellant; Ram Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal and Shashi Kant, JJ.— Heard Sri Sumit Kakkar, learned counsel holding brief of Sri S.K. Kakkar, who appears for the appellant-Insurance Company and Sri Ram Singh, appearing for the claimant respondent no. 1.

2. Respondent no. 2 is represented but has chosen not to appear.

3. The appeal is directed against the judgment and order dated 20.01.2005 passed by the Motor Accidents Claims Tribunal, whereby a sum of Rs.5,52,000/- has been awarded to the claimant-respondent with 5% interest per annum from the date of filing the written statement.

4. Sri Kakkar has advanced two arguments.

5. First that as three persons were travelling on a motorcycle, which collided with the offending Truck, the negligence on the part of the riders of the motorcycle was lit large and as such it was a case of contributory negligence.

6. Secondly, the deceased was an unskilled worker and he was drawing salary of Rs.2,380/- per month and therefore, the Tribunal erred in taking his income as Rs.4,500/-.

7. Sri Ram Singh, learned counsel for the claimants respondents, in response, submits that there was no negligence on the part of the motorcycle riders. The contributory negligence was not proved. Merely, for the reason that three persons were riding the motorcycle, it can not be a case of contributory negligence. The finding of income of the deceased is based on the pay slips on record.

8. We have perused the impugned judgment and order and find that the Truck had hit the motorcycle from behind, as a result of which, Virendra Pratap Singh died. The very fact that the Truck had hit the motorcycle from behind clearly proves that the driver of the Truck alone was negligent. There is no evidence to show that the driver of the motorcycle had lost control for any reason may be on account of over-loading. The carrying of three persons on a motorcycle may be violation of traffic rules but it does not ipso facto proves that the motorcycle was being driven negligently. In view of the above, no negligence on behalf of the riders of the motorcycle is found to be established.

9. Sri Kakkar has placed reliance upon a Division Bench decision of Madras High Court in case of Managing Director Tamil Nadu State Transport Corporation v. Abdul Salam and others, 2003(2) TAC 103 (Madras) to submit riding of motorcycle by three persons at time is negligence on part of its riders.

10. In the said case, three persons were riding the motorcycle contrary to the statutory provision when the accident had occurred. The Court held that as due to unusual movement of the pillion rider, the driver of the motorcycle had lost control, there was contributory negligence.

11. The facts of the above case are quite different in as much as there is no specific evidence in the case at hand that there was any unusual movement of the pillion rider or any activity which has resulted in the loss of control of the motorcycle leading to the accident.

12. In the absence of any evidence to show that the driver of the motorcycle was negligent or has lost the control due to over-loading, the aforesaid decision is of no help to the appellant insurance company.

13. In these circumstances, we do not consider that it is a case of a contributory negligence and the tribunal has gone wrong in holding that the accident had occurred due to the sole negligence of the driver of the truck.

14. The Tribunal has determined the salary of the deceased to be Rs.4,500/- per month on the basis of the pay slips on record, which indicated that he had drawn salary of Rs.4,462/-, Rs.5016/- and Rs.4,995/- in the past three months.

15. No contrary evidence was brought on record.

16. The pay slip of the deceased, which has been filed as annexure no.5 to the stay application, showing that he was working in the pay scale of Rs.2,100/- to Rs.2,820/- was not part of the evidence before the Tribunal.

17. In view of the aforesaid facts and circumstances, the Tribunal has rightly taken the income of the deceased to be Rs.4,500/- per month and there is no illegality or perversity in the said finding.

18. Sri Ram Singh, learned counsel for the claimant respondent, at this stage, submitted that the claimant respondent has filed cross-objections seeking further enhancement in the compensation awarded.

19. He submits that the future prospects of the deceased have not been taken into consideration while determining the dependency and the compensation. The Tribunal has erred in granting very meagre funeral expenses and compensation for the loss of consortium.

20. The cross-objections, filed by the claimant-respondent, are reported to be beyond time by 8 years and 92 days.

21. We find no explanation for such a long delay in filing the cross-objections.

22. The only ground for getting the delay condoned is that the cross-objections could not be filed earlier as previous counsel had not advised for filing of the same.

23. This cannot be a ground for preferring the cross-objections with the delay when the time prescribed filing the same in 30 days from the date of notice of appeal, which has already expired.

24. In view of the above, we do not consider it proper to condone the delay in filing the cross-objections. Accordingly, the cross-objections are rejected as barred by time.

25. Sri Ram Singh placing reliance upon *Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others* 2015 (2) AICC 713 submits that the claimant-respondent is entitled to just and proper compensation and even if no appeal has been preferred or proper prayer has not been made in that regard, the compensation is liable to be enhanced.

26. In the aforesaid decision, the Apex Court in paragraph no.15, has observed that even though the claimants have not preferred any appeal and have prayed for compensation on lower side, in order to do complete justice, it is considered appropriate to enhance the compensation payable to the claimants.

27. This order was passed by the Apex Court in exercise of its power under Article 142 of the Constitution of India so as to do complete justice, which power certainly is not vested in the High Court while exercising the appellate jurisdiction under Motor Vehicles Act.

28. In view of the above, the claimant-respondent is not entitled to any benefit of the said decision.

29. Lastly, we find that the Tribunal has awarded interest on the compensation determined from the date of filing the written statement.

30. The award of interest from the date of filing the written statement is completely illegal. The interest has to be awarded either from the date of filing the claim petition or from the date of passing the order.

31. In these circumstances, we direct that the claimant respondent would be entitled to interest as awarded from the date of the claim petition instead of date of filing the written statement.

32. The appeal is dismissed but with the modification that the claimant-respondent would be entitled to interest not from the date of filing the written statement but from the date of filing the claim petition.