
(2014) 02 AHC CK 0174

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 172 of 2009

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Urmila Singh

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2014) 3 ADJ 81

Hon'ble Judges : Devi Prasad Singh, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : T.K. Misra, Advocate for the Appellant; B.R. Singh, Advocate for the Respondent

Judgement

1. Heard learned counsel for the parties and perused the record. This appeal u/s 173 of the Motor Vehicles Act has been preferred against the judgment and award dated 27.9.2008 passed by the Motor Accident Claims Tribunal/Additional District Judge/FTC 5th, Court No. 14, Sultanpur in M.A.C.P. No. 294 of 2007.

2. The brief facts giving rise to present appeal are that on 25.9.2007 the deceased Ram Chandra Singh was going with his Supervisor to participate in Tehsil Diwas function on his motorcycle bearing No. UP 40 D 4597 as a pillion rider. A Tata 407 bearing No. U.P. 42 2635 which was being driven rashly and negligently caused the accident in question by hitting their motorcycle and sped away. The deceased having been crushed succumbed to his injuries on the spot.

3. Learned counsel for the appellant has assailed the impugned award on the grounds that firstly it is a case of contributory negligence and secondly no penal interest could have been awarded by the tribunal. Accordingly, the questions, which are required to be considered by this Court are firstly as to whether it is case of contributory negligence and secondly as to whether awarding of penal interest was legally justified.

4. As regards contributory negligence submission of appellant counsel is that at

the time of the accident motorcycle was being driven rashly and negligently and that the deceased as well as the driver of the motorcycle both were in intoxicated state of mind. The motorcycle had collided with the truck while it was parked on the road side. As such the insurer/owner of the motorcycle shall be equally responsible for the payment of compensation.

5. While deciding issue No. 2 alongwith issue No. 6 the Tribunal has recorded the finding about truck having hit the motorcycle and causing the accident. After perusal of record a finding has also been recorded by it that the body of the deceased was crushed under the tyre of truck. Accordingly, the tribunal was of the view that the case set up by respondent's counsel was not believable. In case the truck was stationary and parked adjoining to the road then the nature of injuries which the deceased had suffered (crush head and body) would not have been caused. It could have happened only in case of accident having occurred by a moving truck. Finding recorded by tribunal seems to be well considered and correct appreciation of evidence on record. The nature of injury, i.e., crush head and body could not have been received by the deceased in case contention of the appellant's counsel that the truck was parked adjoining the road, is accepted.

6. Now, coming to the second limb of argument of learned counsel for the appellant that the deceased and the driver of the motorcycle were in intoxicated state of mind also seems to be not sustainable. Admittedly, they both were going to attend Tehsil Diwas in the Tehsil concerned, and it will be difficult to believe that a Government employee would go to discharge his duty during the Tehsil Divas which is also ordinarily attended by Higher Authorities in an inebriated state. Apart from this it is also not borne out from the post-mortem report of the deceased that he had consumed liquor. In the absence of any material evidence and keeping in view the surrounding facts and circumstances of the case, argument advanced by the learned counsel for appellant seems to be not sustainable.

7. Admittedly, the appellant has not adduced any evidence before the tribunal to substantiate its case of contributory negligence. The burden was on the appellant to establish the factum with regard to alleged contributory negligence.

8. In a case in Jiju Kuruvila and Others Vs. Kunjujamma Mohan and Others, , while considering the plea with regard to contributory negligence their Lordships of Hon''ble Supreme Court held that merely on the basis of postmortem report indicating that the victim had consumed liquor and the allegations of head on collision, it cannot be presumed that it was a case of contributory negligence. Their Lordships further held that in the absence of any direct or corroborative evidence, no inference can be drawn about the negligence on the part of victim merely on the basis of position of vehicles shown in "scene mahazar". Relevant Portion of the aforesaid judgment of Hon''ble Supreme Court is reproduced as under:

20.5, 20.6.

20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post-mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext. A-5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext. B-2 "scene mahazar" and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like P.W. 3 (independent eyewitness), Ext. A-1 (FIR), Ext. A-4 (charge-sheet) and Ext. B-1 (FI statement) are on record.

21. In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.

9. Coming to the second question involved the argument advanced by the learned counsel for the appellant that penal interest could not have been awarded by the tribunal, he has relied upon a case in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, . Attention has been invited by him towards para. 12 of the said judgment, which is reproduced as under:

12. 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.

10. A perusal of the aforesaid judgment of Hon'ble Supreme Court reveals that no penal interest can be awarded on account of default of payment which may amount retrospective enhancement of the interest. In the present case the tribunal had directed to pay compensation in terms of award alongwith 6% interest within a specified period. However, in the event of default of payment within the specified period, the tribunal has enhanced the compensation from 6% to 9%.

11. In view of the aforesaid judgment of Supreme Court, the tribunal could not have enhanced the interest retrospectively. Of course, in case the Insurance Company failed to deposit the compensation within specified period, some additional interest could have been directed to be paid by the insurance company prospectively, i.e., from the date of default of payment of outstanding dues.

12. In view of above to the extent discussed hereinabove, the impugned award requires modification. Accordingly, the appeal is allowed partly. The impugned award dated 27.9.2008 is modified to the extent that respondent shall be entitled for 9% interest after expiry of stipulated period provided by the tribunal for deposit of compensation amount. For earlier period, i.e., from the date of application till the stipulated period provided in the impugned award, the interest shall remain 6%.

13. The impugned award stands modified accordingly. No order as to costs. The amount deposited by the appellant insurance company in this Court shall be remitted to the tribunal and the tribunal shall release the compensation awarded within a period of three months from the date of receipt of a certified copy of the present order.