(2009) 02 AHC CK 0100

In the Allahabad High Court

Case No : First Appeal From Order No. 322 of 2006

Oriental Insurance Co.Ltd. APPELLANT

Vs

Lalita Pandey & Ors. RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2009) 02 AHC CK 0100

Hon'ble Judges : Devi Prasad Singh, J and V.D.Chaturvedi, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Sri Suresh Panjwani, learned counsel for the appellant and Sri Deepak Kumar Agarwal for opposite parties Nos. 1 to 5.

2. The appellant has preferred this appeal against the impugned award dated 2812006 passed in claim petition No. 163 of 2004 by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1, Lucknow.

3. In brief, Rajendra Prasad Pandey, aged about 40 years, was employed as TrainerSocial Worker in Gram Samaj Jan Kalyan Sewa Sansthan, Shivdinpur Post Kodaria, District Sitapur. While coming to his residence at village Sariya Isaganj, P.S. Sandana, district Sitapur on riding on Vikram Tempo No. U.P.32 AN 7349, he succumbed to injuries on account of accident caused by the tempo driver who lost his control on his stealing. Though he was brought to K.G.M.C. College, Lucknow but could not survive and died on 272004. An F.I.R. was lodged. Later on, the claimants Smt. Lalita Pandey aged about 38 years wife of Late Rajendra Prasad Pandey, Sri Ram Chandra Pandey aged about 72 years and Smt Ram Dulari Pandey aged about 68 years, who are father and mother of the deceased, Master Om Pandey aged about 17 years and Master Ajai Pandey aged about 11 years, the sons of the deceased have filed a claim petition before the Tribunal.

4. According to the claimants, the deceased was post graduate and was employed as Trainer Social Workers in Gram Samaj Jan Kalyan Sewa Sansthan,

Sitapur and his monthly salary was Rs.3000/ per month and other source of income of the deceased from tuition is about Rs. 2000/ (lump sum). Thus the total monthly income of the deceased is said to be Rs. 5000/ per month. Before the Tribunal P.W. 1 Smt. Lalita Pandey and P. W.2 Shyam Behari are the witnesses out of which Shyam Behari is an eye witness, who stated that he has seen the vehicle which was coming from Sidhauli to Sandana being driven by the driver rashly and negligently and met an accident." With the help of some passersby, he had taken out the deceased from the tempo and provided necessary assistance to other injured. No evidence has been led by the appellantrespondent to rebut the allegations on record.

5. The Tribunal has assessed the income of the deceased at the rate of Rs. 3000/ per month and after deducting 1/3rd income of the deceased i.e. Rs. 1000/ for his personal expenses for the purpose of compensation assessed the income of Rs. 2000/ per month. After considering the dependency of the deceased and keeping the age of the deceased, the Tribunal has awarded compensation by applying multiplier of 14 which comes to 3,36,000/. In addition to Rs. 2000/ for funeral expenses and Rs. 5,000/ for love and affection and loss of consortium has been granted by the learned Tribunal.

6. The impugned order does not suffer from any illegality or impropriety. However, while filing the claim petition, the appellant has relied upon the judgment of New India Assurance Co. Ltd. v. Asha Rani and others, 2003 (2) SCC 223 : (AIR 2003 SC 607) with the submission that the circumstances under which accident took place does not hold liable to the Insurance Company to pay compensation. However, the judgment of Asha Rani (supra) has been later on considered by Hon''ble Supreme Court in the case of National Insurance Co. Limited v. Bommlthi Subbhayamma and others, 2005(2) Transport and Accidents Cases, 1 (SC). Their Lordships of the Apex Court has proceeded to observe; to quote:

"The question again came up for consideration before a 3Judge Bench of this Court, of which we are members, in National Insurance Co. Limited, v. Baljit Kaur and others, 2004 (2) SCC 1 : (AIR 2004 SC 1340) wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined:

"By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle ". The liability of the owner of the vehicle to insure its compulsorily, thus, by reasons of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words '' any person'' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression ''any person'' contained in subclause (i) of Clause (b) of subsection

(1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J. was a party, however, bear repetition:

"26. In view of the changes in the relevant provisions in the 1988 Act visavis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third Party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his Vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

In Asha Rani (supra) it has been noticed that subclause (i) of Clause (b) of subsection (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger carrying vehicle must pay premium for covering the risk of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

The same view was reiterated in National Insurance Co. Ltd. v. Challa Bharathamma and others, 2004(8) SCC 517 : (AIR 2004 SC 4882) Pramod Kumar Agarwal and Another v. Mushtari Begum (Smt.) and others, 2004 (8) SCC 667 : (2004 All LJ 3433) and also in National Insurance Co. Ltd. v. Chinnamma and others, 2004 (8) SCC 697 : (AIR 2004 SC 4338).

7.A plain reading of the judgment of Hon''ble Supreme Court referred by the appellant''s counsel as well as the subsequent judgment in Bommithi Subbhayamma (supra) it is evidently clear that the compensation should have been awarded by the Tribunal in the manner the accident had taken place.

8. Accordingly, we do not find any reason to interfere in the impugned award which does not suffer from any illegality or impropriety.

9. However, learned counsel for the appellant has vehemently argued that the interest of 12% is excessive and unreasonable. So far as the submission of the learned counsel for the appellant with regard to the payment of interest is concerned, it seems to have got force. In recent case this Court as well as the Hon''ble Supreme Court have granted interest 9% or 10% per annum.

10. Accordingly, we allow the appeal to the extent of payment of interest is concerned and reduce the interest to 9% from the date of filing of the application before the Tribunal.

11. In view of above, the appeal is allowed in part. The impugned award is affirmed subject to reduction of the interest at the rate of 9% from the date of filing of the application before the Tribunal. Any amount deposited before this Court, shall be remitted to the Tribunal which may be paid to the claimants. 12. Cost easy.