
(2015) 07 AHC CK 0260
In the Allahabad High Court
Case No : F.A.F.O. No. 1557 of 2015

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shashi Devi and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2015) 4 ACC 78 : (2015) 6 ALJ 692

Hon'ble Judges : H.G. Ramesh and Bharat Bhushan, JJ.

Bench : Division Bench

Advocate : S.K. Kakkar and Sumit Kakkar, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

1. At the stage of admission, we have taken up the matter for disposal. We have heard learned Counsel for the appellant and have gone through the material on record.

2. This First Appeal From Order under Section 173 of the Motor Vehicles Act is preferred against the judgment and decree dated 4th March, 2015 passed by Motor Accident Claims Tribunal/District Judge, Etah in M.A.C.P. No. 169 of 2012 whereby the Tribunal has awarded Rs. 7,95,200 from the date of filing of claim petition along with simple interest of 9% p.a. till the actual payment is made.

3. The adumbrated facts of the case are that on 16th May, 2009 when the husband of claimant (Ram Naresh) was going towards Pilua from Village Puthiya through Etah-Sikandara Rau G.T. Road and as soon as he reached between the culvert of Petrol Pump and a Tower of Airtel around 6.45 a.m. in the morning; two persons namely Nitin Kumar and Shailendra Kumar, who were also going on their motorcycle No. UP 80 AZ 6689 towards Puthia, stopped their motorcycle along side the road after seeing the husband of the claimant and started talking to him and in the meantime a truck bearing No. HR 38L 1012 negligently dashed them as a consequence of which the husband of the claimant and one Shailendra

Kumar died on his way to Hospital. Thereafter the claimant (wife) filed Claim Petition before the Motor Accident Claims Tribunal and the Tribunal after serving the notice upon the owner of the truck framed relevant issues for consideration and has arrived at a conclusion that the accident occurred due to negligence on the part of the driver of the offending vehicle No. HR 38L 1012 and thereby awarded the aforesaid amount with interest vide order dated 4th March, 2015. It is this order which is subject matter of challenge before this Court.

4. Learned Counsel for the appellant has challenged the impugned award on the quantum of compensation awarded by the Tribunal as well as contended that the Tribunal has failed to appraise the material facts inasmuch as the accident took place due to the negligence of the deceased himself as he was standing on the road side but the Tribunal has failed to, consider this aspect of the matter and has not recorded any finding as such. The Insurance Company also assailed the impugned order on the ground of fitness certificate of the offending vehicle and contended that the Tribunal has failed to consider the fact that on the date of accident the offending vehicle had no fitness certificate and thereby wrongly fastened the liability of payment of compensation on the appellant and hence the impugned order is liable to be set aside by this Court.

5. We have gone through the impugned award and find that the Tribunal after having held that the accident was due to negligence on the part of the driver of the offending vehicle awarded compensation of Rs. 7,95,200 from the date of filing of the claim petition along with 9% simple interest thereon vide order dated 4th March, 2015 passed by Motor Accident Claims Tribunal/District Judge, Etah. This award has been challenged by the Insurance Company on various grounds.

6. As noted above, the Insurance Company has stated that the deceased himself was standing on the road side and the Tribunal had committed an error in not noticing the said fact and the deceased himself was responsible for happening of the alleged accident. It is further stated that at the time of the alleged accident the offending vehicle (truck) had no fitness certificate issued by the concerned Transport Authority. With respect to quantum of compensation awarded and also as to the earning of future prospects, loss of dependency, etc. it is alleged that the deceased had no fixed income at the time of the alleged accident and the Tribunal has wrongly assessed the notional income of Rs. 4,500 per month and has wrongly and illegally awarded 30% towards future prospects of income of the deceased.

7. So far as the factum of accident is concerned, the Tribunal had noted that due to negligence of the driver of the offending vehicle in question the accident had occurred and he should have been careful while driving the vehicle and in a detailed discussion the Tribunal had reached to the conclusion, while answering the relevant issue raised, that the deceased was not standing on the wrong side of the road it is the offending vehicle which dashed the deceased by going wrong side of the road. The question of involving the deceased himself responsible for the alleged accident attributed to the deceased cannot be accepted in view of the

finding recorded by the learned Tribunal in this regard.

8. So far as the next argument that the offending vehicle had no fitness certificate on the date of alleged accident is concerned, the Tribunal had reached to the conclusion that the Insurer sought to avoid its liability contending that the offending vehicle had no valid fitness certificate. The insurer, however, did not lead evidence in that aspect. The fitness certificate had to be obtained necessarily under the provision of the Motor Vehicles Act but nonetheless there is no such positive report being produced that the accident occurred due to non obtaining the fitness certificate or due to any mechanical defects. However, it cannot be a ground that not obtaining the fitness certificate absolves the insurer from its liability. The Tribunal has held that the insurer did not lead any evidence on that point. The very defence that the offending vehicle violated the provisions of Motor Vehicles Act did not absolve the insurer from its liability. The onus is upon the insurer to establish that the offending vehicle had no valid fitness certificate which he failed to do before the Tribunal. There is no dispute that the accident was on account of the rash and negligent driving of the driver of the Truck and hence in view of the findings recorded by the Tribunal the insurer cannot be absolved from the liability or to pay compensation.

9. So far as the compensation awarded by the Tribunal is concerned, the Tribunal has noted the age of the deceased as 44 years and having regard to the age of the deceased as mentioned in the post-mortem report and also the evidence on record, the Tribunal after taking the income of the deceased as Rs. 4,500 per month (Rs. 150 per day) applied the multiplier of 14. Even for a person of an ordinary labourer/coolie the income would be more than Rs. 240 per day. At that rate, the annual income would be Rs. 86,400. In the present case, the deceased was aged 44-45 years, at the time of his death, (i.e. in the year 2009) and the Tribunal has assessed his income as Rs. 150 per day and at that rate his annual income was assessed as 54,000 and also looking to the future prospects of the deceased the Tribunal has increased 30% in the total income of the deceased by applying the ratio of the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, . It is not necessary that there should be fixed income or the deceased was self-employed for the purpose of calculating the future prospects. The Tribunal has rightly applied the multiplier and awarded the compensation and the same does not call for any interference by this Court.

10. In view of above, we do not find any illegality or fundamental defect in approach or in the methodology adopted by the Tribunal in determining the amount of compensation. Thus, we do not find any illegality in the impugned award requiring any interference by this Court. The appeal being devoid of merits is liable to be dismissed and is hereby dismissed. No order as to costs in this appeal. The appellant is, however, directed to make good the award passed by the Motor Accident Claims Tribunal/District Judge, Etah in M.A.C.P. No. 169 of 2012 within a period of three months from today.