
(2015) 03 AHC CK 0151

In the Allahabad High Court

Case No : First Appeal from Order No. 913 of 2006

Radhika and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2015) 6 ALJ 601

Hon'ble Judges : Rajiv Sharma and Rakesh Srivastava, JJ.

Bench : Division Bench

Advocate : Rajendra Jaiswal, for the Appellant; B.C. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Heard learned counsel for the appellants and Mr. B.C. Pandey, learned counsel for the respondent-Insurance Bank. This is an appeal under Section 173 of the Motor Vehicles Act against the impugned award dated 21.3.2006 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 10, District Faizabad, in Claim Petition No. 61 of 2005. The appeal has been preferred for enhancement of compensation awarded by the Tribunal. The Tribunal has awarded the amount of Rs. 2,13,500/- as compensation assessing the income of the deceased @ Rs. 18000/- per annum. The age of the deceased was about 30-35 years. Hence, keeping in view the age of the deceased, the multiplier of "17" has been applied by the Tribunal in accordance to Schedule II of the Motor Vehicles Act. So far as use of multiplier is concerned, there appears to be no dispute. However, appellants are aggrieved with the income assessed by the Tribunal to the tune of Rs. 18,000/- per annum.

2. Admittedly, while filing the claim petition, the appellants/claimants stated that the income of the deceased at the time of death was Rs. 15,000/- per month. However, in the absence of any documentary evidence, the tribunal has assessed the income as Rs. 15,000/- per month.

3. Hon"ble Supreme Court in the case reported in Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , after considering the Schedule II of the Motor Vehicles Act held that it has been become obsolete and requires amendment. It has further held by their Lordships that even unskilled labours earn @ 100 per day, i.e., Rs. 3,000/- per month. The observation made by the Supreme Court in the aforesaid case of Laxmi Devi (supra) in para 7 is reproduced as under:

"7. Considering the above principles in this case, we must say that the High Court has definitely erred in bringing down the multiplier to 12. It is to be seen that in this case the deceased was 35 years old. The claimants are his wife and four minor daughters. Even as per the Second Schedule the multiplier in case of the persons between 35 to 40 years is 16. In the present case the rate of interest granted is only 6% considering the general rate of interest prevalent in 2004. In our opinion, therefore, the proper multiplier would be 14 as the value of the notional income has been increased. It was nobody's case that the deceased was not working at all. His wife has entered in the witness box and had asserted that he earned Rs. 140/- day. Even if we ignore the exaggeration, the figure arrived at by the High Court at Rs. 100/- per day and Rs. 3,000/- per month appears to be correct. However, considering that the claimant would get only 6 % interest, we would choose to grant the multiplier of 14 instead of 12. Accordingly the notional income as applied would be Rs. 24,000 x 14 : Rs. 3,36,000/- and to this will be added the other compensation like Rs. 2,000/- as funeral expenses, Rs. 5,000/- for the loss of consortium to the widow and Rs. 2,000/- for the loss of estate. The claimants would, therefore be entitled to a sum of Rs. 3,45,000/-. The said sum shall carry the interest at the rate of 6 % per annum from the date of claim petition."

4. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited, compensation on account of injured coolie was subject matter of the dispute. The coolie claimed his earning @ Rs. 4,500/- per month. The analysis of the Hon"ble Supreme Court after considering the earlier judgment arrived to the conclusion that the earning of the coolie shall be 100-150 per day or Rs. 4,500/- per month. Accordingly, Supreme Court accepted the statement that monthly earning of the injured was Rs. 4,500/-. The observation made by the Supreme Court in para 14 of the aforesaid case, which is relevant, is reproduced as under:-

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs. 4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs. 3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs. 3000/- per month.

Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of the labourer was between Rs. 100/- to Rs. 150/- per day or Rs. 4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs. 4500/- to Rs. 3000/- per month. We, therefore, accept his statement that his monthly earning was Rs. 4500/-."

5. In a catena of judgments of Hon"ble Supreme Court, it has been held that while awarding the compensation under Section 166 read with Section 168 of the Motor Vehicles Act, the compensation may be awarded even more than the entitlement as per Schedule II of the Motor Vehicles Act depending upon the facts and circumstances of each case.

6. Coming to present controversy, it appears that the assessment of the income of the deceased as Carpenter i.e. Rs. 18,000/- per annum is too meagre and practically seems to be unsupportive. The accident took place in the year 2005. Accordingly the notional income of the deceased may be safely assessed @ Rs. 3,000/- per month, i.e., Rs. 100 per day.

7. In view of the above, we assess the income of the deceased as Rs. 36,000/- per annum. After deducting 1/3rd in lieu of personal expenses, it shall come to Rs. 24,000/- per annum. By applying the multiplier of "17", the total compensation comes to (Rs. 17,000 x "17"=) Rs. 4,08,000/- and an amount of Rs. 2500/- may be added as loss of estate, Rs. 2000/- for funeral expenses and Rs. 5000/- for loss of love and affection. The total compensation shall come to Rs. 4,17,500/-.

8. Accordingly, we allow the appeal in part and modify the impugned award dated) 21.3.2006 assessing the compensation to the tune of Rs. 4,17,500/-.

9. Let the entire amount of enhanced compensation together with interest after adjusting the amount already deposited, be deposited by the respondent-insurance company before the tribunal within two months from today. The Tribunal concerned shall make payment of the compensation to the appellants within a period of one month from the date of deposition and production of a certified copy of the present judgment. Allowing the appeal to the extent

indicated above, the impugned award is, accordingly, modified.