
(2013) 03 AHC CK 0316
In the Allahabad High Court
Case No : F.A.F.O. No. 601 of 2013

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Ravindra Singh

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 4 ACC 131 : (2013) 98 ALR 36

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Judgement

Anil Kumar Sharma, J.—The appellant being insurer of truck HR-38L-2871 had challenged the award dated 30.11.2012 passed by M.A.C.T./Addl. District Judge, Court No. 2, Muzaffar Nagar in M.A.C.P. No. 269 of 2011, whereby compensation of Rs. 31,38,120/- had been awarded to minor claimant respondent Nos. 2 and 3 on account of death of their mother in the motor accident. We have heard Sri S.K. Mehrotra, learned Counsel for the appellant and perused the impugned award and also the papers filed with the memo of appeal.

2. It appears that on 22.12.2010 Smt. Sangeeta Nehra who was employed as Assistant Teacher in Gramodyan Junior High School, Village Barvala, District Muzaffar Nagar was coming back home after finishing her duty by driving Scooty bearing registration No. UP-12W-5866 and when she reached near Burahana road crossing the driver of truck HR-38L-2871 driving the vehicle rashly and negligently knocked down the scooty on wrong side of the road. Smt. Sangeeta Nehra was taken to hospital in injured condition where she died. The accident was reported to the police. The claimants being husband and two minor sons of the deceased filed claim petition for an award of Rs. 43.20 Lacs alleging that the monthly pay of the 41 years old deceased was Rs. 27,000/-. The offending truck was insured with the appellant and the claim petition was filed against the owner, driver and insurer of the offending truck. They contested the claim petition and led oral and documentary evidence. The opposite parties did not examine any witness. However, the appellant has filed newspapers dated 6.9.2012 and copy of

registered A.D. sent to Public Information Officer, Basic Shiksha Parishad, Muzaffar Nagar. The Tribunal after appreciating the evidence on record and hearing the parties Counsel has found that accident took place due to rash and negligent driving of the driver of truck HR-38L-2871 and there is no contributory negligence of the deceased. It was further held that the papers of both the vehicles involved in the accident and the driving license of drivers were valid and effective on the date of accident.

3. As regards the quantum of compensation the Tribunal after considering the evidence adduced by the claimants has taken monthly salary income of Rs. 26,150/-. However, the husband of the deceased was not found to be dependent of the deceased and only two minor sons of the deceased were found eligible for the award.

4. Learned Counsel for the appellant has vehemently argued that findings of the Tribunal are mainly based on site plan which was prepared by the police during investigation and his contention is that it was a head on accident so drivers of both the vehicles were contributory in the accident. The claimants have examined P.W. 2 as an eye-witness of the accident. No doubt the Tribunal has taken help of the site plan but it would be not correct to say that its findings are based on site plan alone.

5. The owner of the truck has not dared to examine his driver to prove negligence of the deceased in the accident. In fact the opposite party did not lead any oral evidence on this point. It is important to note here that the appellant did not press for framing of issue on the point of contributory negligence of the deceased nor the appellant has taken such plea in their written statement. In the absence of any pleadings on this point the appellant cannot contend that the deceased was herself driving her vehicle rashly and negligently. In these circumstances, we find that learned Tribunal has not erred in holding the driver of truck HR-38L-2871 solely responsible for the accident.

6. As regards the quantum of compensation we find that claimants have examined Jagat Pal Singh P.W. 3 to prove the employment and income of the deceased. Jagat Pal Singh P.W. 3 is the Head Master of the school where the deceased was employed as Assistant Teacher. The pay bills of the teachers were filed before the Tribunal which revealed that monthly pay of the deceased was Rs. 26,150/-.

7. The contention of the learned Counsel for the appellant is that no TDS was deducted from the salary of the deceased but on perusal of the award we find that no such question was asked from P.W. 3 on behalf of appellant regarding tax liability of the deceased. Learned Counsel for the appellant also raised finger on the appointment of the deceased as Assistant Teacher at the age of 40 years on 1,7.2010 but the Tribunal has rightly repelled this argument advanced by the learned Counsel for the insurance company before it, on the ground that deceased belonged to OBC category who enjoyed five years" relaxation in age at

the time of appointment in Government department.

8. In view of above, we do not find any factual or legal error in the impugned award. The appeal sans merit and is accordingly dismissed. Let the statutory amount deposited by the appellant be remitted back to the Tribunal concerned within four weeks.