
(2012) 12 AHC CK 0217
In the Allahabad High Court
Case No : F.A.F.O. No. 4252 of 2012

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Urmila and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Citation : (2013) 1 AWC 583

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Saurabh Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani and Aditya Nath Mittal, JJ.—We have heard Shri Saurabh Srivastava, learned counsel appearing for the Reliance General Insurance Co. Ltd., the appellant. This first appeal from order arises out of the judgment and order passed by the Motor Accident Claims Tribunal/A.D.J.-6th, Baghpat dated 30.8.2012 by which the Tribunal has awarded Rs. 11,86,000 with 7% interest from the date of filing of the application as compensation to the dependents of the deceased, who was driving the motor cycle and died on account of the injuries in an accident on 23.6.2010 at about 2.00 p.m. He was hit from the front by a motor vehicle (Eicher) No. HR 67 8842. The deceased was 44 years old at the time of his death and was drawing Rs. 8,600 as salary as security guard serving in Haryana Electricity Distribution Corporation, Faridabad.

2. The Tribunal found that the offending vehicle was driving in high speed rashly and negligently and was responsible for causing the accident in which fatal injuries were suffered by the deceased. The vehicle was insured on the date of accident by the appellant Insurance company and was not driven against any of the conditions of insurance policy. On the question of compensation the Tribunal held that Shri Ravindra Kumar, P.W. 3, S.S.P. in the office of the Electricity Department, Haryana had produced the documents relating to the salary of the

deceased. He had produced the bills of the contractor, who had engaged the deceased as security man hired by the firm M/s. Sindhu Security Service and Shri Shyam Enterprises. The deceased was getting salary of Rs. 8,600 per month out of which Rs. 1,032 was deducted as contribution to the Employees Provident Fund, Rs. 151 as E.S.I. and Rs. 5 for welfare fund. The compensation was accordingly calculated by deducting 1/4th of the amount, which the deceased would have spent on himself taking into consideration the number of family members and applying multiplier of 15. The Tribunal also awarded Rs. 10,000 for loss of cohabitation; Rs. 5,000 for loss of love and affection to the family; Rs. 5,000 for loss of estate and Rs. 5,000 for funeral expenses.

3. Learned counsel appearing for the appellant-insurance company submits that it is admitted that in the present case the motor cycle had collided with the offending motor vehicle from front but in the case of head-on-collision the Tribunal should have considered the question of contributory negligence. He also submits that income of the deceased was not proved for assessing the quantum of compensation.

4. Shri Saurabh Srivastava has relied upon The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , in which it was held in paragraphs 7 and 8 as follows:

7. At this juncture, It is necessary to refer to the "doctrine of last opportunity". The said doctrine is said to have emanated from the principle enunciated in *Davies v. Mann*, 1342 (10) M&W 546, which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but test of causation. (See *Davies v. Swan Motor Co. (Swansea) Ltd.*, 1949 (2) KB 291. Though in some decisions, the doctrine has been applied by courts, after the decisions of the House of Lords in *The Volute*, 1922 (1) AC 129 and *Swadling v. Cooper*, 1931 AC 1, it is no longer to be applied. The sample test is what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence.

8. Though the driver may not have been in this case wholly responsible for the accident, as contended from the mere fact that the victim acted in contravention or a traffic regulation alone complete immunity from liability of the driver or the appellant corporation for the accident so as to disown totally responsibility to compensate the injured or dependants of the victim cannot be accorded also. Merely because there may have been breach of any traffic regulation, in the absence of concrete, clinching, positive and legally acceptable material to fix sole responsibility for the accident only on such injured/victim, which are conspicuously absent on the facts and circumstances of this case, the liability of

the appellant-corporation remains, though to what extent remains to be considered further. Even according to the stand of the Corporation, the victim was seen by the driver from a distance of about 30 ft. and the vehicle was moving at a snail's pace. If that be so, it is not understood as to how it became totally impossible for the driver to avoid the accident has not been substantiated by proper evidence. In fact the High Court has noticed that there was ample scope for avoiding the collision between the cycle and the bus. The evidence on record also establishes that the bicycle was thrown to a distance of 4-5 ft. Before taking the turn, horn was found not blown by the driver. The application of the brakes and the incident of collision between the cycle and the bus seem to have been almost simultaneous. The stand of the Corporation that the bus had come to a halt much prior to the incident of the collision is not acceptable and though has been rightly rejected by the Tribunal and the High Court, the infirmity in their orders also lay in rejecting the plea of contributory negligence completely. The Tribunal as well as the High Court ought to have appropriately apportioned the negligence keeping in view the materials placed on records and properly balancing rights of parties.

5. Shri Saurabh Srivastava has also relied on Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , in which it was held that where both the vehicles are driving rashly and negligently and accident was result of contributory negligence equally and in which both the vehicles got damaged, the drivers of both the vehicles should be held responsible and that award should be apportioned on the principles of contributory negligence.

6. In the present case, we find that apart from argument raised by the insurance company of contributory negligence, there was no evidence led, as to the negligence of the deceased, who was driving motor-cycle. There was no evidence to record regarding the speed or the manner the motor cycle was driven or that the motor cycle driver would have avoided the accident at the last minute. The Tribunal has considered the question of contributory negligence and has recorded findings that there was no evidence led by the insurance company on the question of contributory negligence.

7. The question of apportionment of the compensation on the contributory negligence is question of law which must be determined on the findings recorded on the evidence led by the parties. The plea of contributory negligence in a case of head-on-collision would not by itself result into findings of contribution to the negligence of the driver of either of the vehicles.

8. In the present case, it is stated that site plan was produced. The site plan was neither relied upon nor annexed with the affidavit in appeal to demonstrate as to how with the help of the site plan the argument of contributory negligence could be developed and sustained.

9. So far as the income of the deceased is concerned, the official of the Haryana Electricity Department had produced the record from which copies were made,

which included bills of the contractor, to establish that the deceased Ram Kumar was paid Rs. 8,600 as wages. The contribution to the Employees Provident Fund and E.S.I. and welfare fund are contribution of the employee from his income for his benefit and for the benefit of his family members. These contributions could not be deducted from the wages for calculating the compensation. No other point was pressed. The first appeal from order is dismissed. The amount of Rs. 25.000 deposited as precondition of filing of the appeal shall be remitted to the Tribunal within a month.