

(2011) 09 AHC CK 0357

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 1225 of 2008

Shah Jahan and Others

APPELLANT

Vs

Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 5 AWC 4982

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—Present appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the claimants-Appellants against the judgment and order dated 17.08.2007 passed by the Motor Accident Claims Tribunal in Claim Petition No. 22 of 2007 whereby a sum of Rs. 1,37,000/- was awarded along with 6% interest per annum.

2. The brief facts of the case are that on 31.12.2006 at about 9.30 pm., the deceased Mohd. Saleem was coming back to home after sale of vegetable. When he reached near Bramhababa at Faizabad-Sultanpur Road, a Truck bearing No. U.P.-42 3030 driven by its driver rashly and negligently, coming from reverse direction, hits the deceased who died on the spot. The aforesaid Truck was insured with the Respondent-Oriental Insurance Company on the date of accident. The claimants of the deceased have preferred a Claim Petition before the Tribunal and the Tribunal after examining the evidence, awarded a compensation of Rs. 1,37,000/- in favour of the claimants-Appellants along with 6% interest. Still not being satisfied, the claimants have filed the present appeal for enhancement of the compensation.

3. After hearing both the parties and on perusal of record, it appears that the accident; insurance policy; and driving license are not in-dispute. The only

dispute is with regard to quantum of compensation.

4. In the instant case, since the deceased was aged about 45 years, -2 hence, multiplier of 13 was applied. No. evidence was furnished pertaining to the income of the deceased, who was a retailer of vegetable and fruits. The Tribunal has taken the notional income of Rs. 15,000/- per annum After deducting 1/3rd for the personal expenditure, Rs. 10,000/- per annum was taken for the purpose of computation. Thus, Tribunal awarded a compensation of Rs. $10,000 \times 13 =$ Rs. 1,30,000/-. In addition, Rs. 7,000/- was awarded for cremation etc. Thus, final compensation was awarded for Rs. 1,37,000/-

5. It may be mentioned that the Hon'ble Supreme Court in the case reported in 2008 (2) TAC 394 (S.C.) Laxmi Devi and Ors. v. Mohammad Tabbar and another followed by this Bench in Guddi Singh and Ors. v. Baboo and Ors. 2010 (28) LCD 857, observed that minimum income even notionally should not be less than Rs. 3,000/- per month.

6. Accordingly, in the present case, the income of the deceased is assessed @Rs. 3,000/- per month and deducted 1/3rd in lieu of personal expenses. Thus, the net income comes to Rs. 2000/- i.e. Rs. 24,000/- per year. Since, the deceased was aged about 45 years, hence multiplier of 13 will have to apply as per second schedule of the Motor Vehicles Act.

7. Needless to mention that regarding the multiplier, both the parties were agreed before the Tribunal for applying the multiplier of 13. Thus, compensation comes to Rs. $24000 \times 13 =$ Rs. 3,12,000/-. In addition to it, the claimants are also entitled for Rs. 2000/- as funeral expenses; Rs. 2500/- as loss of estate; and Rs. 5000/- as loss of consortium. Thus, total compensation comes to Rs. 3,21,500/- (Rupees Three lac twenty one thousand five hundred).

8. In view of above, the appeal filed by the Appellants-claimants is -3 allowed. The impugned award dated 17.08.2007 passed by the Motor Accident Tribunal Faizabad is modified to the extent that the Appellants-claimants are entitled for the compensation of Rs. 3,21,500/- in terms of the impugned award along with 6% interest.

9. The appeal is allowed accordingly. No. cost.