(2013) 09 AHC CK 0024

In the Allahabad High Court

Case No : F.A.F.O. No. 937 of 2011

Shahjad Ali APPELLANT

Vs

Pawan Kumar Singh and Another RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 1 AWC 936

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Rajiv Sharma and Dr. Satish Chandra, JJ.—Present appeal has been filed by the appellant-claimant for the enhancement of the compensation, u/s 173 of Motor Vehicles Act, 1988, against the judgment and order dated 31.5.2011, passed by the Motor Accident Claims Tribunal, Pratapgarh in Claim Petition No. 70 of 2008. Shahjad Ali v. Pawan Kumar Singh and another, where a compensation of Rs. 1,05,308 was awarded against the opposite party No. 2. i.e., New India Assurance Company Ltd. The brief facts of the case are that on 6.7.2007, at about 5.30 p.m., the appellant-claimant was going with two daughters on his motor-cycle. When he reached near Babhanmai bridge, Raniganj, a jeep bearing number U.P. 33 B/5051 was coming from the opposite direction, whose driver was driving it carelessly, rashly and negligently and dashed the motorcycle which resulted serious injuries to all the three persons and later the claimant-appellant became disabled. The driver of the jeep ran away with the jeep towards Raniganj. Immediately, an F.I.R. was lodged. The claimant-appellant has filed the claim petition before the Tribunal, who after examining the entire evidence has awarded a total compensation of Rs. 1,05,308. The Tribunal observed that the accident took place due to contributory negligence of the motorcycle driver and jeep driver. So, the liability was fixed in the ratio of 25% and 75%. Being aggrieved, the appellant-claimant has filed the present appeal.

2. With this background, Sri J.K. Shukla, learned counsel for the appellant submits that the compensation is meagre one. He also submits that the disability

was 50% but notional income was taken @ 15,000 per year. So, he made a request that the compensation may kindly be enhanced.

3. On the other hand, Sri Ved Prakash, learned counsel for the New India Assurance Company Ltd. has justified the impugned award. He submits that on the motor-cycle, there were three passengers. So, it is the sole negligence on the part of the claimant and insurance company is not entitled to pay any compensation. On the specific query from the Bench, he submits that the Commander Jeep in question was insured with the opposite party No. 2.

4. After hearing both the parties and on perusal of the record, it appears that the accident is not in dispute. The Tribunal after examining the site plan and witnesses observed that it was a contributory accident. So, the liability was fixed in the ratio of 25% and 75% between the vehicles. In the absence of any adverse material, there is no reason to interfere with the finding of the Tribunal, so the same is hereby sustained.

5. From the record, it appears that the Commander Jeep was insured with the opposite party No. 2-New India Assurance Company and on the date of accident. Policy was alive. Both the drivers were holding valid driving licence.

6. In the instant case, the Tribunal took the notional income @ Rs. 15,000 per annum. Out of which, 1/3rd was deducted for personal use. But fact remains that in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , national income was fixed @ Rs. 3,000 per month. i.e., Rs. 36,000 per annum. Out of which 1/3rd will have to be deducted for personal use. Thus, the income for the purpose of computation comes to Rs. 24,000 per annum. The Tribunal by looking the age of the victim, which was 45 years, has rightly applied the multiplier of 13. Thus, the amount comes to Rs. 24,000 x 13 = Rs. 3,12,000. The disability is 50%, so it will have to come Rs. 3,12,000 Rs. 2 = Rs. 1,56,000. Out of it. 25% liability towards the motor-cycle will have to be deducted. Thus, the total amount comes to Rs. 1,56,000/- Rs. 39,000 = Rs. 1,17,000. In addition, the appellant-claimant is also entitled to reimbursement of the expenses pertaining to the treatment, attendant and loss of income. The same was already awarded by the Tribunal. Thus, the amount comes to Rs. 1,74,410. The appellant-claimant will be entitled to receive a sum of Rs. 1,74,410 from the New India Assurance Company-respondent No. 2 alongwith interest @ 6% from the date of filing the claim petition before the Tribunal.

7. The insurance company is directed to deposit the remaining/full amount, with the concerned Tribunal within a period of one month. The Registry of this Court is also directed to transmit the amount/record, if any, deposited in this Court, within a period of one month to the concerned Tribunal, who is further directed to disburse the amounts, in terms of the award within a period of three months.

8. The impugned judgment and order is modified accordingly. In the result, the appeal filed by the appellant-claimant is partly allowed.