

(2003) 09 AHC CK 0085
In the Allahabad High Court
Case No : F.A.F.O. No's. 385 and 403 of 1987

Smt. Leela Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2005) ACJ 1739 : (2004) 3 AWC 2439

Hon'ble Judges : V.N. Singh, J;A.K. Yog, J

Bench : Division Bench

Advocate : Bhupeshwar Dayal, for the Appellant;

Judgement

A.K. Yog, J.—Both F.A.F.O. No. 385 of 1987 and F.A.F.O. No. 403 of 1987 arise from common impugned judgment and decree dated 24.2.1987, passed in Claim Petition No. 4 of 1985, Smt. Leela Gupta and Ors. v. State of U. P. and Ors., passed by Motor Accident Claims Tribunal, Mirzapur, whereby Claims Tribunal decreed the claim petition for recovery of Rs. 2,51,800 with costs and pendente lite and future interest at the rate of 9% per annum subject to the directions given in the said impugned judgment and decree.

2. Claim petition was filed by Smt. Leela Gupta (wife of the deceased motor accident victim, Ganga Prasad Gupta) and three minor children under the guardianship of their mother, claiming a sum of Rs. 7 lacs as compensation.

3. It is not disputed, in the instant case, that Ganga Prasad Gupta was working as officiating Executive Engineer in the Department of irrigation, Government of U. P. at the relevant time and while he was on official duty and going through Government vehicle (Jeep No. U.S.M. 3905) driven by the Government employed driver, he met with an accident and died instantaneously on the spot on July 8, 1985 at about 11 p.m. within the jurisdiction of police station, Pipri, district Mirzapur, (U. P.). The deceased was aged about 39 years at the time of his death and there was longevity in his family since his parents had lived upto 90 years.

4. It may be mentioned that the appellants have not challenged the finding with regard to the age and monthly income of the deceased at the time of the accident.

5. Sri Bhupeshwar Dayal, learned counsel on behalf of the claimants has made two submissions which are being dealt hereunder.

6. It is argued that court below has committed illegality in deducting the amount of G.S.I. Rs. 40,000 from the amount of compensation and in support of his contention he has placed reliance upon the case of Bhagat Singh Sohan Singh v. Om Sharma and Ors. 1983 ACJ 203. Concluding para 23 of the decision reads :

"23. From the aforesaid discussion, it clearly emerges that the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents of statutory service rules, employment contracts, or beneficent legislation rooted in the employment of the deceased. To attribute these payments entirely to the fortuitous circumstance of the accident and the resultant death, appears to me as untenable. It is more than plain that if the deceased happened to be a person who was not in the employment at all or one who had neither made any contribution to any provident fund nor rendered qualifying satisfactory service entitling him to gratuity or made any payments for a family pension, then none of these benefits would arise to his dependants despite his death. It is indeed the aforesaid preconditions which are the true fountain head for these benefits and not ipso facto the incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction (which sometimes has unfortunately gone un-noticed) between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation or the death of the employee, I am clearly of the view that provident fund, family pension or gratuity fall clearly in the latter class."

7. No decision contrary to the above cited on the point. It is, therefore, held that deduction of Rs. 40,000 by the Tribunal is bad and it could not be legally deducted from the compensation amount.

8. In view of the above, we accept the submission made on behalf of the appellant that Tribunal was not justified in deducting Rs. 40,000 towards G.I.S.

9. Learned counsel for the appellant next placed reliance upon the decision in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and referred para 13 wherein the Apex Court observed :

"..... Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant

whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1,032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income of Rs. 2,000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier....."

10. Our notice is drawn to the application under Order XLI, Rule 27 CPC allowed (since no objection filed on behalf of the respondents) and thereby additional evidence has been brought on record to show that the salary of the deceased, had he lived in future, would have been raised to Rs. 3,500 w.e.f. the year 1986 and subsequently to Rs. 13,125 due to revisions of pay-scale like any other employee.

11. In support of the contentions, claimants filed documents (along with application under Order XLI, Rule 27, Code of Civil Procedure) but nothing filed by the other side in rebuttal.

12. The claimants have filed copy of the judgment and order dated 27.5.1993, passed by Motor Accident Claims Tribunal, Barabanki in case of another employee who was junior to Ganga Prasad Gupta but died in an accident on 21.4.1989, i.e., after revision of pay-scales in 1996.

13. Tribunal accepted monthly income of the deceased, at the time of death (July 8, 1985). On the basis of methodology adopted by the Supreme Court and considering that the deceased was also in stable service wherein prospects of promotion and rise in salary in future and taking the income on lower side, it cannot be ruled out that his earning would have doubled up. Taking income of deceased at Rs. 2,700 per month, the same can be assumed safely as Rs. 2,700 x 2 = Rs. 5,400 had the deceased lived. Now 1/3rd is to be deducted-being the amount spent on deceased himself towards his personal expenses, it gives us a figure of Rs. 3,600 per month. Thus, the expected benefit to be derived by the claimants comes to Rs. 3,600 x 12 = Rs. 43,200 per annum as contribution towards his family. Taking into account the age of the deceased, we find that multiplier of 16 is available. The annual income of Rs. 43,200 being multiplied by 16, comes to Rs. 6,91,200. However, considering imponderability and uncertainty

of life, this amount is reduced by 1/3rd. It gives the figure of Rs. 4,70,000 (on rounding).

14. In our opinion, claimants are entitled to Rs. 4,70,000 as compensation on account of death of Ganga Prasad Gupta (husband of Smt. Leela Gupta) along with 9% simple interest per annum to be calculated from the date of filing of claim petition till the date of its actual payment. Any amount already deposited by the respondents before the Tribunal during pendency of claim petition or under interim order passed by this Court shall be duly accounted for. The respondents of F.A.F.O. No. 385 of 1987 are hereby directed to deposit entire compensation amount along with 9% simple interest per annum with the concerned Motor Accident Claims Tribunal within three months of receipt of certified copy of this judgment and the claimants shall be entitled to withdraw in accordance with their share. In case of minor, natural guardian Smt. Leela Gupta will be entitled to withdraw the share of minor for the welfare and benefit of minors.

15. Registry is also directed to remit sum of Rs. 25,000 deposited in this Court u/s 173 of the Motor Vehicles Act as also lower court record forthwith to the concerned Tribunal.

16. In the result, F.A.F.O. No. 385 of 1987 stands allowed subject to above directions and observations and consequently F.A.F.O. No. 403 of 1987 is hereby dismissed. However, there shall be no order as to costs.