
(2017) 10 AHC CK 0010
In the Allahabad High Court
Case No : 2474 of 2009

Smt. Roshani Devi, & Others

APPELLANT

Vs

Sri. P.S. Malhotra

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

Citation : (2017) 10 AHC CK 0010

Hon'ble Judges : Amreshwar Pratap Sahi, Saral Srivastava

Bench : Division Bench

Advocate : Deepak Rana, Ajay Singh

Final Decision : Allowed

Judgement

1. Heard counsel for the appellants and counsel for the respondent.
2. present First Appeal From Order has been preferred by claimants-appellants challenging the award dated 18.04.2009 passed by Motor Accident Claim Tribunal/ Additional District Judge, Court No. 4, Meerut, in Motor Accident Claim Petition No. 560 of 2008, Smt. Roshani Devi and others Vs. Sri P.S. Malhotra. The claimants-appellants has prayed for enhancement of the award.
3. The claim petition was instituted by appellant nos. 1 to 5 for the death of one Mahendra Kumar in an accident on 30.04.2008. The claimants-appellants stated in the claim petition that Mahendra Kumar, deceased, was 52 years on the date of accident. The claimants-appellants stated that the deceased was employee of C.D.A. Pension and was getting Rs.9,283/- per month and after sixth pay commission his salary would have been Rs. 15,000/- per month. The claimants-appellants has claimed compensation of Rs. 22,20,000/- with 18 per cent interest.
4. The owner of the offending Maruti Car did not appear before the trial Court to contest the claim petition and therefore, the Tribunal proceed ex-parte against him vide order dated 17.11.2008.

5. The Insurance Company filed written statement stating that claim petition has been filed on the correct facts and further the driver of the Maruti Car was not holding valid driving license. The Insurance Company also pleaded that the compensation awarded by the Tribunal is on higher side and consequently, the Insurance Company pleaded for dismissal of claim petition.

6. The Tribunal framed issue no. 2 with regard to quantification of compensation. The Tribunal held that the salary of deceased of Rs. 9,259/- on the basis of salary certificate. The Tribunal calculated the compensation by taking into consideration the basic pay of Rs.4,870/- and the dearness allowance of Rs.2,869/-. By adding basic pay and dearness allowance, the Tribunal assessed monthly income of deceased Rs.6,939/-. Thus, the Tribunal held the annual income of deceased Rs.83,268/-. The Tribunal thereafter deducted 1/3rd towards personal expenses of the deceased from the annual income of Rs.83,268/- of deceased and applied the multiplier of 11 corresponding to the age of deceased, and awarded Rs.6,18,632/- as compensation towards pecuniary damage.

7. The counsel for the appellants submitted that the Tribunal has erred in law, in taking into consideration only the basic pay and dearness allowance from the salary certificate of the deceased, whereas, the Tribunal ought to have taken Rs.9,259/- as income of deceased for the purpose of calculating the compensation. The counsel for the appellants submits that for the purpose of calculating the compensation, amount which deceased was getting on account of special nature of employment and was being spent exclusively on the deceased would be deducted. He submitted that as per salary certificate, there was no amount which the deceased was getting by virtue of special nature of employment. Thus, the compensation has to be calculated treating the income of deceased as Rs.9,259/- which is the salary of the deceased as per salary certificate. It is settled law that for calculating the compensation amount which the deceased was getting by virtue of special nature of employment and was being spent exclusively upon the deceased could be deducted from the salary of the deceased for the purpose of compensation. We find that the Tribunal has not recorded any reason while deducting the amount of deceased which was getting under the different heads except basic pay and dearness allowance for the purpose of calculation of compensation. Thus, we hold that the compensation should be calculated on the basis of salary indicated in salary certificate of the deceased.

8. The counsel for the appellants further submitted that the Tribunal has erred in law in refusing to grant revised pay scale on the ground that revision of pay has come into effect after the date of death of deceased, therefore, no benefit of revision of pay can be extended to the claimants. The counsel for the appellants in support of the argument on a revision of pay has relied upon para 22 of the Apex Court judgment in case of (Rajesh and Others Vs. Rajbir Singh and others) 2013 (9) SCC 54, which is extracted herein-below:

"Petitioners have produced before this Court Annexure-P4 salary certificate of the

deceased Bijender Singh which shows that after the revision of the salary by the Sixth Pay Commission with effect from 01.01.2006, the deceased had a monthly salary of Rs. 9,520/-. It is submitted that since the Sixth Pay Commission benefits were announced only subsequently making it to operate retrospectively from 01.01.2006, the salary certificate could not be produced before the Tribunal or the High court. Applying the principles in Sarla Verma's case as explained in Santosh Devi's case, and in the instant case, the compensation has to be re-assessed as follows:

9. The counsel for the respondent has submitted that the benefit of revision of pay which came into effect after the date of death of deceased cannot be extended to the claimants for calculating the compensation and, for this he relied upon paragraph no. 24 of the judgment of the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others*, 2009 (6) SCC 121, which is extracted herein-below.

"24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

10. The appellants have relied upon para 22 of the judgment of *Rajesh & others (Supra)* wherein the Apex Court has granted the benefit of Sixth Pay Commission benefits which were announced subsequent to death of deceased making it

operative retrospectively from 01.01.2006.

11. Thus, applying the ratio laid down in the case of Rajesh & Others (Supra) that benefit of revision of pay announced subsequent to death of deceased but made it effective retrospectively prior to death of deceased, we set-aside the finding of the Tribunal refusing to grant benefit of revision of pay. From record we find that the appellants has filed salary certificate indicating the salary of deceased fixed at Rs.11,814/- per month after revision of pay which has not been rebutted by Insurance Company, therefore, we hold that Rs.11,814/- per month be treated as income of deceased for calculating compensation.

12. The counsel for the appellants further urged that the deceased was 52 years of age and therefore, as per Rule 222-A of the Uttar Pradesh Motor Vehicles (Eleventh Amendment) Rules, 2011, 20 per cent future prospect should have been awarded. The counsel for the appellants submitted that Division Bench of this Court in First Appeal From Order No. 2190 of 2010 (ICICI Lombard General Insurance Company Ltd. Vs. Smt. Reena Tyagi) has held that the Rules of 2011 are applicable even to the pending proceedings. The judgment in First Appeal From Order No. 2190 of 2010 (ICICI Lombard General Insurance Company Ltd.) (Supra) has been followed by another Division Bench of this Court in First Appeal From Order No. 688 of 2002 (Smt. Medha Aggarwal and others Vs. New India Insurance Company and other). The relevant paragraph of the judgment of Smt. Medha Aggarwal (Supra) is extracted below:

"This Court, dealing with such situation while deciding the First Appeal From Order No. 2190 of 2010 (ICICI Lombard General Insurance Company Ltd. vs. Smt. Reena Tyagi), taking note of the judgment of the Apex Court in Narayan Guin and others vs. Niranjana Modak, AIR 1985 SC 111, has held that if during the pendency of the appeal, any change in law occurs, it has to be taken into account and the rights of the parties has to be governed according to the amended law.

We have also taken the same view in First Appeal From Order No. 2819 of 2005 (Surja Devi vs. U.P. State Road Transport Corporation and another) decided by us vide order of date, hence in view of the forgoing discussions, we find that the Tribunal has erred in not adding the future prospect in the actual income of the deceased."

13. Refuting the said submission the respondent counsel urged that there is Division Bench judgment (ICICI Lombard General Insurance Company Ltd. Vs. Smt. Beena Devi and others), 2014 (7) ADJ 328 (DB) A.H.C., wherein it has been held that since there is no mention in rules that these rules shall be applicable from the retrospective effect, therefore, the appellants cannot take the benefit of the Rules of 2011.

14. Thus, following dictum laid down in case of (Smt. Medha Aggarwal) (Supra), we are also of the view that the claimants-appellants are entitled for the benefits of Rules, 2011 and consequently claimants are entitled for benefit of future

prospect. Thus, the compensation should be calculated by adding 20 per cent in the income of the deceased towards future prospect.

15. It is further provided that the enhanced amount of compensation shall carry the same rate of interest as awarded by the Tribunal. The Tribunal is directed to calculate the compensation as per directions given above.

16. The appellants have not pressed any other point.

17. The appeal is partly allowed to the extent indicated above.

18. There shall be no orders as to costs.