(2012) 12 AHC CK 0074

In the Allahabad High Court

Case No : First Appeal From Order No. 603 of 2007

Smt. Sunita and Others — APPELLANT

Vs

Smt. Renu Gupta and Another — RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 11 ADJ 780 : (2013) 1 AWC 610

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Shashank Singh, for the Appellant; Ajai Singh and T.J.S. Makker, for the Respondent

Judgement

Arvind Kumar Tripathi (II), J.—Heard Sri Shashank Singh, learned counsel for the appellants and Sri T.S. Makka, learned counsel for the respondents. This first appeal from order was reported to be beyond time by eight days. Grounds mentioned in the application u/s 5 of the Limitation Act are sufficient and they are supported by affidavit. In view of this, the application u/s 5 of the Limitation Act is hereby allowed and thus F.A.F.O is being treated as within time.

2. This appeal is pending since 2007 hence with the consent of the parties we are deciding this appeal on merits.

3. A claim petition was filed by Smt. Sunita and Others u/s 166 Motor Vehicle Act for death of Vijay Pal which occurred on 2.7.2005 at about 7.30 P.M. by rash and negligent driving of the driver of Truck No. UP 21 G/9403. It was alleged that Vijay Pal was going on his scooter to his house, residential colony, U.P. Forest Corporation, Kheri Road. At about 7.30 P.M. a truck bearing No. UP 21 G/9403 being driven rashly and negligently by its driver hit the scooter due to which Vijay Pal died on the spot. The age of the deceased was about 29 years at the time of accident and he was earning about Rs. 10,000/- per month from his service. By filing this claim petition, petitioners claimed Rs. 10,00000/- (ten lacs)

as compensation amount.

4. The owner of the vehicle Smt. Renu Gupta filed a written statement alleging that the income shown is highly excessive and no document in support of this has been filed. No accident took place by the involvement of her truck. Truck No. UP 21 G/9403 was going to Barkhar Society Mohammadi on 2.7.2005 from Rajapur Godown and the deceased tried to overtake the truck and in that effort his scooter slipped on the sand collected on the right side of road, due to which he fell down and was crushed by the rear vehicle of the truck. Thus, the deceased died due to his own negligence. The driver was not at fault. He was having a valid driving licence and the truck was ensured with the New India Insurance Company, Mela Road Branch, Lakhimpur, Kheri. Thus the liability to pay the compensation falls upon the Insurance Company.

5. The Insurance Company submitted its written statements alleging that deceased was negligent. Site plan of the place of the accident and injury report have not been submitted. Scooter driver was not having valid driving licence. Accident is the fall out of negligent driving of the scooter driver. Earning of the deceased has been exaggerated the truck was not being driven as per policy. Learned Tribunal framed following issues after going through the pleading of the parties.

1. Whether Truck No. UP 21 G/ 9403 being driven rashly and negligently by its driver hit the scooter of Vijay Pal on 2.7.2005 at about 9 a.m. near old Cold Storage, Rajapur, P.S. Kotwali, Lakhimpur, Kheri in which Vijay Pal received injuries and he died on the spot?

2. Whether the truck driver was having valid and effective driving licence at the time of accident, if so its effect?

3. Whether truck No. UP 21 G/9403 was validly insured with the New India Insurance Company at the time of accident. If so, its effect?

4. Whether the accident occurred due to negligence of deceased himself, if so its effect?

5. To what compensation if any, claimants are entitled, if yes then from whom and how much?

6. In order to prove its claim, claimants have examined P.W. 1 Sunita and P.W. 2 Om Prakash. Alongwith above oral statements photocopy of First Information Report in Crime No. 1376 of 2005, postmortem report, registration certificate, tax payment certificate, insurance papers and driving licence (all photo states), original driving licence of deceased Vijay Pal and identity card issued by Forest Department and last salary certificate, certified copy of First Information Report, certified copy of charge-sheet and certified copy of postmortem report were filed.

7. Opposite parties have neither adduced any oral evidence nor filed any documents.

8. Learned Tribunal has after going through the evidence of the parties awarded a sum of Rs. 1,79,500/- (one lac seventy nine thousand five hundred) and 6% interest on that amount from the date of filing of the petition and till its actual payment. Feeling aggrieved by the lesser amount of compensation, this First Appeal From Order has been filed by the claimants for enhancement of the compensation amount.

9. It was submitted by the learned counsel for the petitioner that late Vijay Pal was earning Rs. 1-139/- per month as salary and no evidence to the contrary was adduced by the opposite parties. So the learned Tribunal was at fault in not treating this amount for calculation of the compensation. Learned Tribunal has also not considered the future prospects of the deceased.

10. In case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it has been held that:

10. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects? In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the Court can taken note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1,032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2,000 as gross income before deducting the personal living expenses. The decision in Susamma Thomas was followed in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , where the deceased was getting a gross salary of Rs. 1,543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earnings would have nearly doubled, say Rs. 3,000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period and determined the income as Rs. 2,200 per month. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , as against the actual salary income of Rs. 42,000 per annum (Rs. 3,500 per month), at the time of the accident, this Court assumed the income as Rs. 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , this Court increased the in-come by nearly 100 per cent, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the income was increased only by 50 per cent and in Abati Bezbaruah Vs. Dy.

Director General Geological Survey of India and Another, , the income was increased by a mere 7 per cent. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is the taxable range, the words ''actual salary'' should be read as ''actual salary less tax'']. The addition should be only 30 percent if the age of the deceased was 40 to 50 years. There should be no addition where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increased, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

11. We have gone through the impugned judgment. It is nowhere been denied that deceased was a Government employee. The salary certificate was disbelieved only on the ground that the salary certificate was not proved by any departmental official. In view of this, the learned Tribunal has considered the notional income of Rs. 15,000/- as the basis for calculation. As per the decision of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, Supreme Court, the Tribunal ought to have considered Rs. 3000/- (three thousand) per month as basis for calculation of the compensation and his future income also ought to have been considered at the time of calculating the amount of compensation.

12. Considering the above decisions we are of the view that since the deceased was in the opinion of the Tribunal of the age of 35 years hence, it can safely be presumed that his future income would have enhanced had he been alive.

13. In view of the above treating his monthly income to be Rs. 3000/- at the time of death, deceased, being Government servant was liable to get increased salary during his tenure of service. Considering the future prospects of the deceased with regard to his age, we find it proper to treat his income to be Rs. 5,000/ - per month as a basis for the calculation of the compensation. Considering Rs. 5,000/- per month the annual dependency comes to Rs. 60,000/- (sixty thousand) per annum. Deducting one third from this amount the amount for calculation of the compensation comes to Rs. 40,000/- per annum. Learned Tribunal has applied the multiplier of 17 which according to the decision of Laxmi Devi''s case (supra) should have been 14. Thus, the total amount of loss of dependency comes to Rs. 40,000 x 14=5,60,000/-(five lac sixty thousand). Tribunal has also awarded Rs. 2,000/- for funeral expenses, Rs. 2,500/- for loss of estate alongwith Rs. 5,000/- for loss of consortium to Mrs. Sunita being wife of the deceased.

14. Thus the petitioners are entitled to this amount as compensation.

15. In view of the above discussion we are of the view the petition is likely to be partly allowed and is hereby partly allowed. Claimants are entitled for compensation of Rs. 5,69,500/-(five lacs sixty nine thousand five hundred).

16. The New India Assurance Company is directed to pay the amount within a period of two months before the Tribunal failing which claimant will be entitled to receive this amount through the Tribunal.

17. Any amount already paid should be adjusted from this compensation amount.

18. Petitioner No. 5, Smt. Sudhara and petitioner No. 6, Bahorilal will get Rs. 50,000 (fifty thousand) each through account payee cheque. Petitioner No. 2 and 3 will get Rs. 50,000 (fifty thousand) each which shall be kept in a fixed deposit in any Nationalized Bank till they attain the majority. Petitioner No. 4 will get Rs. l,00000/- (one lac) which shall be kept in a fixed deposit in any Nationalized Bank till she attains the majority. The remaining amount alongwith the interest on total amount shall be given to the petitioner No. 1 out of which she will be entitled to get Rs. l,00000/- (one lac) in cash through an account payee cheque and the remaining amount shall be deposited in a monthly income scheme of the nearest post office from her residence and she will be entitled to get monthly interest for her day to day expenses.. Statutory deposit made in this Court shall be remitted to the Tribunal, if not already remitted as early as possible.