(2017) 02 AHC CK 0182

In the Allahabad High Court

Case No : First Appeal From Order No. 3561 of 2011

Smt. Sushila Devi APPELLANT

Vs

U.P.S.R.T.C. Thru. M.D. RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) 121 ALR 205

Hon'ble Judges : Pankaj Mithal and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Kamini Pandey and Anand Pandey, Advocates, for the Appellants; Nripendra Mishra, Advocate, for the Respondents

Final Decision : Partly Allowed

Judgement

Pankaj Mithal and Shashi Kant, JJ.—Heard Ms. Kamini Pandey, learned counsel for the claimant-appellants and Sri Nripendra Mishra, learned counsel for respondents.

The claimant-appellants have preferred this appeal for enhancement of compensation awarded by the Tribunal.

2. The Tribunal by the impugned judgment, order and award dated 20.7.2011 has awarded compensation of Rs.1,63,100/- with 6 per cent interest from the date of presentation of the claim petition till its payment on account of the death of one Jaipal Singh, who died in an accident on 04.8.2009. He was traveling in a tempo which had collided with the bus of U.P. Roadways. The Tribunal held that the accident occurred due to sole negligence on the part of driver of the bus. The age of the deceased was held to be 59 years and his income to be Rs.2400/- per month. Accordingly, the Tribunal applied the multiplier of 8 in determining the compensation.

3. Ms. Pandey, learned counsel for the claimant has raised two points. First, that the deceased was working with the Bank and was drawing salary of Rs.26,370/-

per month and therefore, the Tribunal is not justified in taking his income to be Rs.2,400/- per month only. Secondly, the age of the deceased was not more than 50 years at the time of accident and therefore, multiplier of 13 ought to have been applied.

4. We have considered the evidence on record and find that no document or material was brought on record to prove that the deceased was working in the bank and was drawing salary of Rs.26,370/-. Only a salary slip, paper No.34 Ga, was filed but the same was not proved rather wife of the deceased in her statement clearly stated that she is not aware whether any salary slip was issued in respect to the income of the deceased and she is not receiving any pension. She does not know from where salary slip has been brought and placed before the Court.

5. In these circumstances, the Tribunal discarded the salary slip and proceeded to determine the income by treating the deceased to be a labourer. The Tribunal took Rs.100/- per day as the minimum wages which a labourer would be earning and by taking 24 days as the actual days in a month on which a person would have worked, took his income to be Rs.2400/- per month.

6. In the case of a labourer, it has been the consistent view of the Court that notional income of Rs.3000/- per month should be taken as the base. Accordingly, we are of the opinion that the Tribunal erred in confining the income of the deceased to be Rs.2,400/- per month in place of Rs.3,000/- per month.

7. Secondly, coming to the age of the deceased, the widow of the deceased in her statement has clearly stated her age to be 45 years and that of her husband to be 50 years at the time of accident. The postmortem report also mentions the age of the deceased to be 50 years. There is no material or evidence on record, which may prove otherwise or which may support the finding of the Tribunal that the age of the deceased at the relevant time was 59 years. The Tribunal has grossly erred in taking the age of the deceased to be 59 years by stating that he must be 10 years elder to his wife. Such a finding is highly based upon conjecture and cannot be accepted.

8. In view of the above, the age of the deceased is held to be 51 years and according to Smt. Sarla Verma v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 and taking the age of the deceased between the age group of 51-55 years, multiplier of 11 would be applicable.

9. In view of the above, compensation payable to the claimant is worked out as under :

Income

Rs.3,000/- p.m.

Rs.36,000/- p.a.

One-third deduction

Rs.36,000/- x 1/3 = Rs.12,000/-

Rs.24,000/-p.a.

Multiplier

11

For funeral expenses

As awarded by the Tribunal

Rs.2,000/-

For loss of Assets

As awarded by the Tribunal

Rs.2,500/-

For love and affection

As awarded by the Tribunal

Rs.5,000/-

Total compensation

Rs.2,73,500/-

10. In view of the above, the judgment, order and award of the Tribunal dated 20.07.2011 stands modified to the extent indicated above and the appeal is allowed in part.

