
(2009) 05 AHC CK 0693
In the Allahabad High Court

Sri Usma! Ali and others

APPELLANT

Vs

Ram Moorti and others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0693

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.

Heard Sri Rakesh Dhar Dubey learned counsel for the appellants, Shree Prakash Singh learned counsel for the claimants respondents no. 1 to 5 and Sri S.K. Lal learned counsel for the respondent no. 6.

An accident took place on 16.6.1983 between a bus and a cycle. On account of the accident two persons on the cycle sustained injuries and ultimately died. They were father and son. Accordingly, a joint claim petition was preferred by their dependants. The tribunal vide judgment and award dated 21.11.1985 awarded compensation of Rs. 54,000/ for each of them with 6% interest from the date of petition till the date of payment of the amount. However, the liability of the Insurance company ie., respondent no. 6 was confined to Rs. 50,000/ only in view of Section 95(2)(b)(1) of the Motor Vehicles Act, 1939. The remaining amount was directed to be paid by the owner of the vehicle ie, the appellant. Aggrieved, the appellant who is the owner of the vehicle has come up in this appeal.

On behalf of the appellant two submissions have been made; first, that under Section 95 (2) (b) (1) the liability of the Insurance Company is not restricted to Rs. 50,000/ in all but is 50,000/ in respect of each of the deceased and the second submission is that one of the deceased persons was a minor aged about 10 years and therefore he can not be awarded equal amount of compensation as has been awarded in the case of the death the other who was his father.

The provisions of Section 95 sub clause (2) of the Motor Vehicles Act, 1939 came up for consideration before the Bench of three Judges of the Apex Court in the case of Motor Owner's Insurance Co. Ltd V. Jadavji Keshavji Modi and others 1981 A.C.J. 507. The apex Court held that "any one accident" is to be construed from the point of view of the claimant and where the victims are two it would amount to separate accident and in each case the liability of the Insurance company would be to the extent of Rs. 50,000/. The aforesaid decision has been followed by the Orissa High Court in its decision reported in 1987 (2) T.A.C. 241 Hindustan Steel Limited Vs. C. Malthy and others and it has been held that the liability of the Insurance company to compensate each of the third party to the accident is upto Rs. 50,000/ in view of Section 95 (2) (b) (1) and it is wrong to restrict the liability to Rs. 50,000/ in both the cases. A similar view has been taken by the Kerala High Court following the above Supreme Court decision in 1989 (2) T.A.C. 126 Smt. Velunni Vs,. Smt. Premlatha and others.

In view of the above decisions on the point, in the instant case also the total liability of the Insurance company was not liable to be restricted to Rs. 50,000/ in both the cases and the Insurance company is liable to indemnify each of the deceased persons up to the extend of Rs. 50,000/ each ie., a total of Rs. 1,00,000/ in the instant case.

The next submission with regard to quantum awarded in respect of the minor is concerned, learned counsel for the appellant has placed reliance upon 2000(1) T.A.C. 208 (SC) Donat Louis Machado and others Vs. L. Ravindra and others wherein it has been held in the case of the death of the minor deduction of 2/3rd should normally be made for the grant of compensation. In the present case the quantum of compensation has been worked out by making deduction of only 1/3rd from the monthly income which was determined to be Rs. 450/ of the father and was applied in the case of son also. Thus, by applying the aforesaid decision the dependency of the family of the minor comes to Rs. 1800/ per annum and as such by using multiplier of 15 in view of the age of the mother, the total compensation payable in respect of the minor is worked out to be Rs. 27,000/.

Accordingly, the claimants are entitle to compensation of Rs. 54,000/ in respect of deceased Nirottam and Rs. 27,000/ in respect of the deceased Ranjit with interest as awarded by the tribunal. Out of the aforesaid, the respondent No. 6, the Insurance company is to indemnify upto Rs. 50,000/ in the death of Nirottam and the entire amount of Rs. 35,000/ in respect of Ranjit. The balance amount of compensation shall be paid by the owner appellant with proportionate interest.

Appeal is allowed as above. The judgment, order and award of the tribunal dated 21.11.1985 passed in M.A.C. No. 56 of 1983 (Smt. Ram Murti and others Vs. Usman Khan and others) stands modified to the above extent.