(1981) 08 AHC CK 0008

In the Allahabad High Court

Case No : F.A.F.O. No. 96 of 1975

State Road Transport Corporation — APPELLANT

Vs

Bhai Lal and Others — RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Motor Vehicles Act, 1939 — Section 110, 110(cc), 110A

Citation : (1981) AWC 665

Hon'ble Judges : K.N. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : S.K. Sharma, for the Appellant; Tapan Ghosh, Nawal Kishore and B.K. Burluwan, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—This appeal is directed against the judgment and award of the Motor Accidents Claim Tribunal, Allahabad, dated 5-9-1974 awarding a sum of Rs. 24, 250/- as compensation to the legal heirs of Ram Chandar.

2. On July 19, 1975, Ram Chandar deceased was going on his cycle when he was hit by a stage carriage UPZ 5025 belonging to the U.P. State Road Transport Corporation inflicting serious injuries to him, which resulted in Ram Chandar''s death. Bhai Lal, brother of the deceased filed a Claim Petition on his behalf and on behalf of the widow of the deceased, and his two children for compensation u/s 110A of the Motor Vehicles Act. He claimed a sum of Rs. 1,63,300/-as compensation from the Corporation. Before the institution of the Claim Petition the State Road Transport Corporation (hereinafter referred to as the Corporation) had already paid a sum of Rs. 750/- to Smt. Suggi, widow of Ram Chandra deceased. The Corporation appeared before the Tribunal and contested the proceedings on a number of grounds. The Tribunal held that Ram Chandar deceased was aged 20 years and that he was member of the joint family which consisted of claimants. As a result of his death the joint famity members

including his wife and children and parents have lost the support which they were receiving from him. The Tribunal assessed the income of the deceased Ram Chandar at Rs. 60/- per mensem. It further determined his life expectancy to 60 years, and after giving certain allowance the Tribunal fixed a sum of Rs. 25,000/- as total amount of compensation payable to the claimants, out of which a sum of Rs. 750/ has already been paid to the widow of the deceased has been deducted. The Tribunal directed that a sum of Rs. 2000/- shall be paid to the parents of the deceased and the remaining amount of Rs. 22,250/- shall be paid to the widow of the deceased Smt. Suggi Devi and her two sons. Aggrieved, the Corporation has filed this appeal challenging the order of the Tribunal." The claimants have also filed a cross objection claiming enhancement of the amount of compensation. Both the appeals and the cross-objection have been heard together and we consider it proper to dispose of the same by a common judgment.

3. learned Counsel for the Appellant urged that Bhai Lal, brother of Ram Chandar deceased, was not entitled to present a claim petition u/s 110-A of the Motor Vehicles Act, inasmuch as he was not a legal representative of the deceased. Since the claim petition was not presented by a proper person the Tribunal had no jurisdiction to award any compensation to the claimants. The learned Counsel cited a number of authorities in support of his contention that no legal representative or authorised agent is entitled to present a claim petition before the Tribunal. We do not consider it necessary to refer to the authorities as in our opinion the question raised by the Appellant can be disposed of without the help of authorities. Section 110-A is in the following terms :

110-A. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 110, may be made

(a) by the person who has sustained the injury ; or

(b) where death has resulted from the accident (by all or any of the legal representatives) of the deceased ; or

(c) by any agent duly authorised by the person injured (or all or any of the (sic)

The section contemplates making of an application for compensation by the person who may have sustained injury or the owner of the property which may have been destroyed on account of the accident. Clause (b) of Section 110-A(1), however, provides that in a case where the accident has resulted into death of a person then all or any representative of the deceased are entitled to make application for compensation. Clause (c), however, further lays down that in case of a claim for injury the petition can be made by any agent duly authorised by the person who may have received injuries. Similarly, in the case of death of a person a person duly authorised by or any of the legal representatives of the deceased is entitled to make an application for compensation. The opening part of clause (c) of Section 110-A which authorises an agent to make an application, covers both class of cases, namely, the case where the claim is made for injury aswell as the case where claim is made on account of death of a person. The scheme as contained in Section 110-A(1) and its sub-clauses unfolds the legislative intent that an agent duly authorised is entitled to make application for compensation on behalf of the claimants.

4. The U.P. Motor Accidents Claims Tribunal Rules, 1967 framed under the Act regulate proceedings before the Claims Tribunal. Rule 2(c) defines legal re presentatives," according to which the meaning assigned to the expression is the same as defined in clause (11) of Section 2 of the Civil Procedure Code, 1908. The expression legal representative" as defined by clause (11) of Section 2 of the Code means a person who in law represents the estate of the deceased person and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person upon whom the estate devolves on the death of the party so suing or sued. The definition of the term legal represent ative" as contained in clause (11) of Section 2 of the Code of Criminal Procedure, is, therefore, fully applicable to Section 110-A of the Act. It is thus clear that a legal representative, as defined by the Civil Procedure Code, is authorised to make an application before the Tribunal.

5. learned Counsel for the Appellant, however, urged that in the instant case the claim petition was presented by Bhai Lal who was brother of the deceased Ram Chandar. He was not a legal representative of the deceased as the deceased had left behind his parents, bis widow and two minor sons, who were representing the estate of the deceased and as such they were entitled to file claim petition. There fore the claim petition should have been dismissed as contemplated by Rule 4 of the U.P. Motor Accident Claims Tribunal Rules, hereinafter referred to as the Rules. Rule 3 provides that an application for payment of compensation shall be made in the form prescribed accompanied by a fee of Rs. 10/- in the form of Court fee stamp. Rule 4 lays down that the claim petition shall be presented by the applicant in person and if he is prevented by sufficient cause from appearing personally the appli cation may either be sent to the Tribunal by registered post or it may be presented by his agent authorised in writing in this behalf. Rule 6 confers power on the Tribunal to dismiss a claim petition summarily if he is of the opinion that there is no sufficient cause for proceeding with the claim petition. In the instant case, Bhai Lal had specifically stated in the claim petition that he had been authorised by the other claimants to present the petition on their behalf. The authority of Bhai Lal to present the petition on behalf of the widow and on behalf of the minor sons of the deceased was not seriously challenged before the Tribunal. No evidence was produced to challenge the authority of Bhai Lal. Moreover, the Tribunal has rightly pointed out that not a single question was put to Bhai Lal when he entered the witness box relating to his authority for presenting the claim petition on behalf of the claimants. In this view of the matter even if Bhai Lal was not a legal representative, the Appellant is not entitled to succeed as the Tribunal has not granted any compensation to Bhai Lal, instead it has granted compensation to the admitted legal representatives of the deceased. We are, therefore, of the opinion that the point raised by the Appellant

must fail.

6. learned Counsel for the Appellant then urged that the amount of compensation awarded was excessive. We have gone through the evidence and considered the question carefully, but we find no good reason to interfere with the Tribunal''s findings. Admittedly, Ram Chandar deceased was aged 20 years. He was carrying on the business of purchasing and selling vegetable aswell as hair of pig. In addition to that he was carrying on his cultivation and contributing his earning towards the joint family fund. Bhai Lal appeared in the witness box and deposed that Ram Chandar''s income was between Rs. 400 to Rs. 500 per mensem. The Tribunal has not accepted that amount, instead it has recorded finding that Ram Chandar''s contribution to the family was Rs. 60/- per month. He was Khatik by caste. He was carrying on the joint family business of purchasing and selling vegetables and of purchasing and selling hair of pig. He was also working in the fields. There is evidence on record that each member of the family contributed to the joint family fund. It is a matter of common knowledge that in Khatik family each member contributes to the family fund and in our opinion the Tribunal rightly assessed the deceased''s contribution to the joint family fund. The parents of the deceased as well as his widow and son have been deprived of amount by reason of Ram Chandar''s death. The Tribunal in our opinion has been conservative in fixing the income of Ram Chandar. We find no reason to take a different view as no evidence whatsoever was produced by the Appellant before the Tribunal relating to the income of the deceased. The Tribunal has further determined the expectancy of life of Ram Chandar to 60 years. Thus in our opinion the Tribunal rightly held that the claimants were entitled to receive a sum of Rs. 24,250/- as compensation.

7. learned Counsel for the Appellant then urged that since the entire amount was being paid in lump sum, some deduction should have been made by the Tribunal. It is true that if Ram Chandar had not died and continued in life, the amount which has been paid to the claimant could be given to the family in (sic), therefore some deduction should have been made by the Tribunal for the lump sum payment of total amount of compensation. We would have interfered with the judgment of the Tribunal on this ground, but we find that the Tribunal arbitrarily reduced the amount of Rs. 28,800/- to Rs. 25,000/- without recording any reason and further the Tribunal committed an error in not awarding interest to the claimant. u/s 110(cc) it is the statutory duty of the Tribunal to award interest to the claimant till the date of payment. Having regard to these facts and circumstances we do not consider it proper or desirable to interfere with the Tribunals order. There is thus no force in the appeal and it is liable to be dismissed.

8. Coming to the cross objection, learned Counsel for the Appellant urged that the claimants were entitled to increased amount of compensation. According to the learned Counsel for the Respondents the income of the deceased should have been determined at the rate of Rs. 500/- per month and the entire amount

claimed by the claimant should have been decreed. On a perusal of the evidence on record, we are unable to accept the contention. No doubt, Bhai Lal in his statement before the Tribunal asserted that Ram Chandar deceased was earning Rs. 400 to Rs. 500 per month but in cross-examination he failed to give any details of the same. The Tribunal rightly rejected his testimony on this question. The claimants failed to produce any other reliable evidence showing that the income of the family was more than that assessed by the Tribunal. It is, therefore, not possible to interfere with the findings of the Tribunal.

9. In the result the appeal as well as the cross-objection both fail and are accordingly dismissed, then but the parties shall bear their own costs. The interim order dated 7-4-1977 is discharged. The amount which is in deposit in the Court of the Claims Tribunal shall be paid to the Respondent-claimants in accordance with the order of the Tribunal.