
(2016) 01 AHC CK 0234

In the Allahabad High Court

Case No : First Appeal From Order No. 192 of 2016

The National Insurance Company Ltd.

APPELLANT

Vs

Vinesh and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, Section 166, Section 173

Citation : (2016) AAC 1301 : (2016) 4 ADJ 519 : (2016) 3 AILLJ 112 : (2016) 3 AllWC 2943 : (2016) 116 ALR 396

Hon'ble Judges : Krishna Murari and Raghvendra Kumar, JJ.

Bench : Division Bench

Advocate : Vinay Kumar Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Raghvendra Kumar, J.—1. This First Appeal From Order has been preferred by the National Insurance Company under Section 173 of the Motor Vehicles Act, 1988 assailing the award and order dated 31.10.2015 passed by Motor Accident Claims Tribunal/A.D.J., Court No. 8, Meerut in MACP No. 918 of 2013 (Smt. Vinesh and others v. Sri Sababul and others), awarding compensation of Rs. 8,94,000/- along with the interest @ 7% per annum from the date of filing of the claim petition.

2. The award has been challenged by the Insurance Company-Appellant inter-alia on the grounds:--

"1. The Tribunal has failed to consider that accident was attributable to negligence of driver of motorcycle as well and it was a case of contributory negligence.

2. The Tribunal has erred in selecting the multiplier for computing the compensation on the age of the deceased, whereas it ought to have been computed considering the age of claimants-dependents.

3. The Tribunal has wrongly determined the notional income of the deceased to be Rs. 6,000/- per month whereas the notional income ought to have been considered as Rs. 3,000/- per month."

3. We have considered the submissions made on behalf of counsel for the Insurance Company.

4. The Tribunal has recorded a finding that the onus of proving the factum of contributory negligence or the composite negligence was on the Insurance Company. No evidence has been led on behalf of Insurance Company to substantiate the plea of contributory or composite negligence.

5. For considering the aspect of the contributory negligence of the motorcyclist, it is essential to glance over the site plan which has been prepared by the Investigating Officer. The perusal of site plan clearly reveals that the Motorcycle was moving from West to East and after crossing the North-South road, it approached place "A" which has been shown in the site plan on the left side of the road where the accident took place, the direction of the movement of the truck has been shown on the North-South road which took turn to its right on the East-West road, the place "A" has been shown by the Investigating Officer on the extreme left of the road running East-West. Even on North-South road the direction of the movement of the truck has been shown closure to the right side, i.e., in the opposite side.

6. From the perusal of the site plan, the possibility cannot be ruled out that the truck coming on North-South road on its right side after taking turn might have gone much to the left and dashed to the motorcycle. The findings in this regard recorded by the Tribunal with respect to the composite negligence per se appear to be just & proper fully in coherence with the site plan prepared by the Investigating Officer.

7. The oral evidence has been led to effect that the offending truck bearing registration No. UP-22-T-2645 dashed the motorcycle from its back. This clearly rules out the aspect of the contributory on the part of the motorcyclist. It has come in evidence that after dashing the motorcycle, the truck fell into a pit by the side of the road. This further indicates the situation that truck was not being plied in manageable speed, therefore, it fell into a pit. These circumstances clearly lead to the inference that the truck was being plied rashly and negligently at the relevant time and further strengthens the factum of rash & negligent driving of the truck.

8. In view of the aforesaid discussions, we do not find substance in the submissions made by the counsel for the appellant and we do not find any justification to interfere with the findings recorded by the Tribunal with respect to Issue Nos. 1, 3 and 6, which have been decided simultaneously by the Tribunal. The findings recorded by the Tribunal appear to be justified and reasoned one.

9. The second ground of attack is with respect to selection of the multiplier by

the Tribunal, the Tribunal has taken into consideration the age of the deceased for computing the amount of compensation.

10. The contention of the learned counsel for the appellant is that instead of taking the age of the deceased for selection of the appropriate multiplier, the age of the dependents or claimants should have been taken into consideration.

11. Insofar as the question of multiplier is concerned, the Tribunal has applied a multiplier of 16 based on the age of the deceased.

12. The issue is no longer *res integra*. In a series of decisions, the Hon'ble Apex Court has held that the multiplier is to be applied on the basis of the age of the deceased and not on the basis of the age of the dependants and the age of the dependants have no nexus with the computation of the compensation. In the case of *Amrit Bhanu Shali & Ors. v. National Insurance Company & Ors.*, , 2012 (4) TAC 775 (SC), where the deceased was also an unmarried male aged about 26 years and his parents lodged the claim. The High Court had applied the multiplier taking into consideration the age of the claimants. In the Appeal before the Apex Court one of the issues raised was that the multiplier had been wrongly applied as the age of the deceased was relevant and to be considered for applying the multiplier. After considering the arguments and the law on the point the Apex Court in paragraph 17 of the report held that the multiplier is to be applied on the basis of the age of the deceased and not on the basis of the age of the dependents. It is further observed that the age of the dependents has no nexus with the computation of the compensation. Relevant part of the judgment is extracted below.

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

16. In the case of *Sarla Verma Case* , (2009) 6SCC 121 this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13.

17. The appellants produced Income Tax Returns of deceased Ritesh Bhanu Shali for the years 2002 to 2008 which have been marked as Ext. P10C. The Income Tax Return for the year 2007-2008 filed on 12.03.2008 at Raipur, four months prior to the accident, shows the income of Rs. 99,000 per annum. The Tribunal has rightly taken into consideration the aforesaid income of Rs. 99,000 for computing the compensation. If the 50% of the income of Rs. 99,000 is deducted towards ""personal and living expenses" of the deceased the

contribution to the family will be 50%, i.e., Rs. 49,500 per annum. At the time of the accident, the deceased Ritesh Bhanu Shali was 26 years old, hence on the basis of decision in Sarla Verma (supra) applying the multiplier of 17, the amount will come to Rs. 49,500 x 17 = Rs. 8,41,500. Besides this amount the claimants are entitled to get Rs. 50,000 each towards the affection of the son, i.e. Rs. 1,00,000 and Rs. 10,000 on account of funeral and ritual expenses and Rs. 2,500 on account of loss of sight as awarded by the Tribunal. Therefore, the total amount comes to Rs. 9,54,000 (Rs. 8,41,500/- + Rs. 1,00,000/- + Rs. 10,000/- + Rs. 2,500) and the claimants are entitled to get the said amount of compensation instead of the amount awarded by the Tribunal and the High Court. They would also be entitled to get interest at the rate of 6% per annum from the date of the filing of the claim petition leaving rest of the conditions mentioned in the award intact."

13. The same view has been reiterated by the Hon''ble Apex Court in the case of Rajeshwari & Ors. v. Oriental Insurance Company, , 2012 (4) TAC 782 (SC). Reference may also be made to the decision in the case of M. Mansoor & Anr. v. United India Insurance Co. Ltd. & Anr., , 2013 AIR SCW 6497. The facts of this case were similar to the case of the present case. The deceased was a bachelor aged 24 years and survived by his parents who were the claimants. The Tribunal had applied the multiplier of 17 taking the age of the deceased to be applicable. On appeal by the Insurance Company the High Court held that multiplier of 12 was applicable taking into consideration the age of the claimants. On appeal by the claimants the Apex Court following the ratio laid down in the case of Amrit Bhanu Shali (supra) applied the multiplier of 18 taking into consideration the age of the deceased.

14. This view was again subject matter of consideration by the Hon''ble Apex Court in the case of Reshma Kumari v. Madan Mohan, , 2013 (2) TAC 369 (SC). In the said case, the Hon''ble Apex Court has summarised its conclusion as follows.

"(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death."

15. We may also note here that the 2nd Schedule which provides the table for applying the multiplier mentions the age of victim/deceased. It nowhere refers to the age of claimants. Thus also the argument that age of the claimants is to be taken into consideration for applying the multiplier can not be sustained.

16. The legal propositions in view of the case law cited above has now been crystalised that the age of the deceased would be a criteria for applying the appropriate multiplier in accordance with law. Thus, the Tribunal has not committed any error in applying the appropriate multiplier as per the age of the deceased, hence the arguments in this regard cannot be sustained.

17. The next contention of the counsel for the Insurance Company with respect to the notional income which has been taken to be Rs. 6,000/- per month by the Tribunal.

18. From the perusal of the award, it clearly reveals that the claimant has filed admission form of I.I.M.T. Group of Colleges, which goes to indicate that the deceased was a student of B.C.A. Drawing guidance from the proposition laid down by the Apex Court in *V. Mekala v. M. Malathi* and another reported in , 2014 (3) AWC 3242 (SC), the Tribunal has fixed the notional income to be Rs. 6,000/- per month, whereas in the case cited (*supra*) in special circumstance, the Apex Court in the case of a student of class XI, who had sustained 70% disability, the notional income was fixed to be Rs. 10,000/- per month and accordingly the Apex Court had enhanced the compensation.

19. In the instant case, the deceased was a student of B.C.A. and died consequent upon the accident, we are of the considered opinion that in the case in hand, the learned Tribunal has not committed any mistake in fixing the notional income of the deceased to be Rs. 6,000/- per month. Thus, the Tribunal has not erred in awarding the compensation to a tune of Rs. 8,94,000/-.

20. After carefully scrutiny, we are of the opinion that the findings recorded by the Tribunal are reasoned one and are just and proper, we don't find any justification to interfere with the award. The First Appeal From Order is bereft of merit and is, accordingly, dismissed.