
(2014) 04 AHC CK 0017

In the Allahabad High Court

Case No : First Appeal From Order No. 2509 of 2006

The New India Assurance Company Ltd.

APPELLANT

Vs

Sudhir Kumar Gupta and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 1 ALJ 23

Hon'ble Judges : Sanjay Misra, J;Om Prakash-VII, J

Bench : Division Bench

Judgement

Om Prakash-VII, J.—The First Appeal From Order No. 2509 of 2006 (The New India Assurance Company Ltd. v. Dr. Sudhir Kumar Gupta & others) has been directed against the judgment and award dated 29.05.2006 passed by Motor Accident Claims Tribunal/Additional District & Sessions Judge/Special Judge (Anti Corruption), Varanasi in Motor Accident Claim Petition No. 233 of 2002 (Dr. Sudhir Kumar Gupta v. Saleem Ahmad & others) whereby an award of Rs. 8,55,000/- along with the simple interest at the rate of 8% per annum has been passed against the appellant-insurance company. The First Appeal From Order No. 2510 of 2006 (The New India Assurance Company Ltd. v. Dr. Sudhir Kumar Gupta & others) has been directed against the judgment and award dated 29.05.2006 passed by Motor Accident Claims Tribunal/Additional District & Sessions Judge/Special Judge (Anti Corruption), Varanasi in Motor Accident Claim Petition No. 236 of 2002 (Dr. Sudhir Kumar Gupta & others v. Saleem Ahmad & others) whereby claim petition has been allowed awarding Rs. 7,10,000/- along with the simple interest at the rate of 8% per annum against the appellant-insurance company.

2. Since both the aforesaid First Appeal From Orders relate to the same Accident, therefore both the Appeals have been heard together and are being decided together by this common judgment with the consent of learned counsel for both the parties.

3. The brief facts of the case are that on 05.10.2000 at about 6:30 p.m. the claimant-respondent Dr. Sudhir Kumar Gupta along with his wife Dr. Neeta Gupta, daughter Km. Tanvi, son Tejas and friend Vimlendu Kumar Singh was going from Varanasi to Meerut via Lucknow on his Maruti Car No. DL-3CC-1754 and when they reached near village Kunwarpur, P.S. Attaria, District Sitapur, on the highway, the driver of the Truck No. UP-21G-9326 driving the truck rashly and negligently came from opposite direction and dashed to the car of the claimant-respondent Dr. Sudhir Kumar Gupta, resultantly Dr. Sudhir Kumar Gupta and others sitting in the car received serious injuries. Dr. Neeta Gupta also received serious injuries and she died on the way to hospital. The said incident occurred due to rash and negligent driving of the truck, which hit the car of the respondent after coming from opposite side.

4. Dr. Sudhir Kumar Gupta received grievous injuries on his body. Initially he was treated at Lucknow, but thereafter referred to Sir Sunder Lal Hospital, B.H.U., Varanasi. It is also the case of Dr. Sudhir Kumar Gupta that treatment was continued and he has spent Rs. 5 lacs on the treatment till filing of the claim petition. There is disablement due to injuries in his leg and he does not move conveniently. He has also suffered mental and physical agony.

5. The accident took place when the driver of the offending vehicle overtook the bus rashly and negligently coming on extreme right side of the road. At the time of accident, respondent Dr. Sudhir Kumar Gupta was aged about 45 years and he was earning Rs. 18,000/- per month. All the dependents have been arrayed in the claim petition.

6. The same facts have been narrated in the claim petition No. 236 of 2002 mentioned above in which a compensation on account of death of the deceased Dr. Neeta Gupta had been claimed. Dr. Neeta Gupta was aged about 42 years at the time of accident. She was running a nursing home namely Seva Sadan at Shivpur, Varanasi and was earning Rs. 1 lac per month.

7. The defendant-appellant insurance company has filed written statement, but the other defendants have not filed written statement despite service before the Tribunal.

8. The appellant insurance company in its written statement has denied in both the cases the averments made in the claim petitions and has disputed the age, occupation and income of the deceased. It is also the case of the appellant insurance company that there was contributory negligence on the part of the Car driver. Other defenses available to the appellant insurance company have also been taken in the written statement.

9. On the basis of pleading of the parties, following issues have been framed in claim petition No. 233 of 2002 in the Tribunal:

10. The issues, which have been framed in claim petition No. 236 of 2002 in the Tribunal on the basis of pleadings of the parties, are given as under:

11. Petitioner Dr. Sudhir Kumar Gupta in claim petition No. 233 of 2002 has examined himself as P.W. 1, Dr. S.K. Dubey as P.W. 2, Dr. Kamakhya Prasad as P.W. 3 and Km. Tanvi Gupta as P.W. 4. Prescription papers and diagnosis report paper Nos. 22 C/1 and 23C/16 have been filed in the Tribunal in this claim petition regarding expenses incurred on treatment. Papers starting from 24C/1 to 24C/7, discharge slip 25C/1 and 25C/2 have also been filed besides this. Other papers regarding treatment and C.T. Scan report etc. have also been filed. Claimant has also filed the papers regarding treatment from Sir Sunder Lal Hospital, B.H.U., Varanasi. Some papers regarding occupation of the claimant and inspection reports of offending vehicle and car have also been filed.

12. Appellant insurance company has examined D.W. 1 Vijayanand Chaubey in claim petition No. 233 of 2002 and also filed papers relating to insurance policy, verification report, report of registration certificate, driving license and medical bills of treatment.

13. In claim petition No. 236 of 2002, petitioners have examined as P.W. 1 Dr. Sudhir Gupta and P.W. 2 Km. Tanvi Gupta and in documentary evidence, photostat and certified copies of the first information report, site plan prepared by the I.O., charge-sheet, postmortem report of the deceased, insurance cover note of the offending vehicle, photostat copy of the driving license of the driver of the offending vehicle, photostat copy of high school certificate and the Medical degree of the deceased have been filed before the Tribunal.

14. Appellant insurance company did not examine any witness in oral evidence, but in documentary evidence has filed photostat copies of the insurance policy and the driving license.

15. Learned Tribunal after affording opportunity and hearing the parties allowed the aforesaid claim petitions against the appellant insurance company in favour of the claimant-respondents as above.

16. Feeling aggrieved with the said awards, First Appeal From Order No. 2509 of 2006 and First Appeal From Order No. 2510 of 2006, as mentioned above, have been filed by the insurance company challenging the award on the ground mentioned in the memo of Appeals,

17. Affidavits have been exchanged between the parties.

18. We have heard Sri. Vinay Khare, learned counsel for the appellant insurance company and Sri. Q.K. Ansari, holding brief of Sri. Mohd. Yaseen, learned counsel for the claimant-respondents in both the aforementioned Appeals.

19. Defendant-respondents i.e. driver and owner of the offending vehicle did not turn up despite service of notice.

20. The contention of learned counsel for the appellant insurance company is that the Tribunal has framed issue regarding contributory negligence, but evidence available on record was not correctly analyzed, therefore, a wrong/

illegal conclusion has been taken and the claimant Dr. Sudhir Kumar Gupta, who was also liable for the said accident, has not been fastened with any liability.

21. It has also been submitted by the appellant insurance company that it was the duty of the claimant respondent Dr. Sudhir Kumar Gupta, who was himself driving the car, to take extreme care and caution while driving the motor vehicle on a highway. If he had taken care and caution to avoid the accident then the accident might have not occurred. A reference was given of the evidence adduced before the Tribunal.

22. Learned counsel for the claimant-respondents has submitted that the Car was being driven on left side. The driver of the offending truck overtook the bus without taking any care and caution. The car driver tried to avoid the accident and turned the car extremely left side, but the truck driver did not make any effort to avoid the accident, as a result the truck hit the right back side of the car. Therefore, rash and negligent driving cannot be assumed on the part of the car driver.

23. At this stage, learned counsel for the claimant-respondents referred the evidence available on lower Court's record and also the conclusion drawn by the Tribunal in this regard.

24. On perusal of impugned judgment and orders, it is revealed that Tribunal for deciding the matters has framed issue regarding rash and negligent driving on the part of the driver of the offending vehicle and has also framed issue regarding contributory negligence on the part of the car driver. While deciding both the claim petitions, Tribunal has concluded in both the claim petitions on issue No. 5 as follows:

25. The term "contributory negligence" squarely and solely applies to the conduct of the claimant alone. If the claimant is guilty of an act or omission, which has materially contributed to the accident and the resultant injury and damages, the matter comes within the concept of contributory negligence and Courts are enjoined to apportion the loss between the parties as the facts and circumstances may justify.

26. From the perusal of evidence, it transpires that driver of the offending truck overtook the bus and the car driver was driving the car on the left side of the road. The truck driver overtook the bus moving the truck towards right side of the bus. The truck hit the car to its rear right side which also indicates that car driver tried to avoid the accident by moving the car on its left side and due to that reason the said car was not collided with the truck from its front side. The finding regarding contributory negligence cannot be assumed in the present matter.

27. On close scrutiny and analysis of the entire evidence available on record, the arguments advanced by the learned counsel for the appellant insurance company have no substance. The finding recorded by the Tribunal in regard to contributory

negligence, rash and negligent driving on the part of the offending vehicle is in conformity with the fact and evidence of the case. Conclusion taken by the Tribunal on Issue Nos. 1 and 5 in both the cases needs no interference.

28. Issue No. 2 is relating to the driving license of the driver of the offending truck and Issue No. 3 is relating to insurance of the offending truck. Both these issues have been decided in affirmative and finding on these issues have not been challenged during the course of argument by the learned counsel for the appellant insurance company and, therefore, we do not find any necessity to discuss the finding on these issues.

29. Learned counsel for the appellant insurance company has also challenged the compensation amount arguing that medical papers were not duly proved and the multiplier used by the Tribunal is not in accordance with law. Tribunal has illegally awarded compensation on the ground of disability while there was no disability certificate.

30. Learned counsel for the claimant has argued that claimant-respondent Dr. Sudhir Kumar Gupta was under treatment for a long time in different hospitals. He is unable to move conveniently and he cannot perform his duty as he had performed earlier. Therefore, compensation awarded on this score is not interferable.

31. It is also argued that papers/evidence adduced in respect of the expenses incurred on treatment have been verified by the insurance company. Thus the Tribunal has rightly allowed Rs. 1 lac on this score.

32. In First Appeal From Order No. 2510 of 2006, learned counsel for the appellant insurance company has argued that income of the deceased was not proved and higher multiplier has been used to calculate the compensation. The calculation worked out in the matter is not in accordance with law. It has also been submitted that the claimant-respondent Dr. Sudhir Kumar Gupta was not dependent on the income of the deceased. Hence he was not entitled to any compensation. Other claimant-respondents Km. Tanvi and Master Tejas are also not dependents as Dr. Sudhir Kumar Gupta has himself admitted that he is taking care of them.

33. Arguments advanced by the learned counsel for the parties in respect of First Appeal From Order No. 2509 of 2006 if minutely analyzed in consonance with the evidence available on record and also with the finding arrived at by the Tribunal, then it is clear that Tribunal, while awarding the compensation, is empowered to award compensation on the basis of disability irrespective of this fact that no specific disability certificate has been filed in the matter. The Tribunal can do so on the basis of injuries suffered by the claimant. In the present matter, there was clear evidence of medical practitioner that claimant Dr. Sudhir Kumar Gupta has suffered 25% permanent disability. The Tribunal, while awarding compensation on this score, has worked out the compensation in proportion of only 25%. Since there was a clear evidence that claimant-respondent Dr. Sudhir Kumar Gupta

was aged about 45 years, therefore, multiplier used by the Tribunal is also in accordance with law. The amount awarded in lieu of expenses incurred on his treatment is also on the basis of evidence available on record. The arguments advanced by learned counsel for the appellant are not acceptable and have no substance. The Tribunal has rightly awarded Rs. 8,55,000/- along with 8% interest on the awarded amount from the date of filing of the petition against the appellant.

34. In First Appeal From Order No. 2510 of 2006, which is relating to claim petition No. 236 of 2002, as mentioned above, there is no dispute that the deceased was a medical practitioner. From the evidence it is also clear that a nursing home was run by her. The Tribunal on the basis of age of the deceased has rightly applied the multiplier deducting the amount from the annual income spent by the deceased for running of the nursing home day to day. One third deduction has been made from the annual income of the deceased for her own expenses. This finding is also not interferable. Since Petition had been filed under Section 166 of the Motor Vehicles Act, therefore the amount awarded in lieu of loss of consortium and love & affection is legal one. The arguments advanced by learned counsel for the appellant insurance company in this respect are also not acceptable and have no substance. Therefore, there is no need of any interference in the impugned judgments and orders. We do not find any error or illegality in the impugned awards.

35. For the aforesaid reasons both the First Appeal From Orders, finding no sufficient ground, are hereby dismissed accordingly.

36. Stay order/interim order, if any, stands vacated.

37. The amount, if any, deposited during pendency of the Appeals if still lying in these Appeals be remitted back to the Tribunal for payment to the claimants. Let a copy of this judgment and order be also placed in First Appeal From Order No. 2510 of 2006 (The New India Assurance Company Ltd. v. Dr. Sudhir Kumar Gupta & others)

No order is passed as to cost.