**(2013) 03 AHC CK 0296**

**In the Allahabad High Court**

**Case No :** First Appeal from Order No. 2175 of 2004

United India Insurance Co. Ltd. APPELLANT

Vs

Iliyas Khan and Others RESPONDENT

**Date of Decision :** 21-03-2013

**Acts Referred:**

**Citation :** (2014) 1 ACC 203 : (2013) 99 ALR 444

**Hon'ble Judges :** Rakesh Tiwari, J;Anil Kumar Sharma, J

**Bench :** Division Bench

**Advocate :** Amaresh Sinha, for the Appellant; D.K. Tewari, for the Respondent

**Final Decision :** Dismissed

## Judgement

Rakesh Tiwari, J.

Heard learned Counsel for the parties and perused the record.

1. This First Appeal From Order has been preferred by the appellant challenging the validity and correctness of the award dated 25.5.2004 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 1, Bareilly in M.A.C.T. No. 671 of 2002, Iliyas Khan & Others v. United India Insurance Co. Ltd. & Others. The impugned award aforesaid is assailed on the ground that owner and driver of Tempo in which the deceased is said to be traveling is liable to be dismissed for non-joinder of party and there is no cogent evidence regarding the income of the deceased before the Tribunal as such Tribunal has arbitrarily assessed the income of Rs. 24,000 per annum and has adopted multiplier of ''16'' on the claimants'' age who are said to be about 40 to 42 years at the time of death of the deceased, hence award is excessive, arbitrary, illegal and against the evidence available on record and is liable to be set aside.

2. The brief facts of the case in nutshell are that Altaf Khan was returning from Bareilly to his village in Tempo bearing registration No. UP-25/9070 and when the said Tempo stopped on its left to the road for dismemberment of the

 

passengers, an accident is said to had been caused by Tanker bearing registration No. GJ-12V/8717 with the aforesaid Tempo as the driver of the truck aforesaid was driving the vehicle in rash and negligent manner. Some of the passengers in the Tempo received grievous injuries and others died in the accident. Altaf Khan was also one of the persons who died on the spot in the said accident. A petition was filed by the respondent Nos. 1 and 2 claiming Rs. 5 lacs as compensation in the instant accident by alleged dependants of the deceased who was aged about 22 years and said to be skilled worker of Zari earning about Rs. 6,000 per month at the time of his death.

3. The claim was contested by United India Insurance Company, the appellant by filing written statement inter alia denying the factum of accident between Truck and Tempo as claimed in the petition by the claimants. In the alternative it was pleaded that a higher excessive amount of compensation have been claimed; that the owner of the vehicle was running the vehicle against the terms and conditions of the insurance policy and that the petition was bad for non-joinder of necessary parties who were the driver and the owner of the tempo aforesaid.

4. On the basis of the pleadings of the parties the Tribunal framed following four issues:

1. Whether the alleged accident took place by rash and negligent driving of the driver of the tanker No. GJ-12V/6717 and whether Altaf Khan died of the injuries received in it?

2. Whether the petition was bad for not making owner driver and insurer of tempo No. UP-25/9070 as party?

3. Whether the driver of the tanker had no valid driving licence at the time of the accident? If so, its effects?

4. To what amount of compensation and from whom of the opposite party, the petitioners were entitled?

5. Claimants filed documents vide list 19-Ga whereas the appellants filed only one document i.e. 23-Ga. The claimants also produced two witnesses in support of their case, namely, PW-1 Iliyas Khan father of the deceased and PW-2 Rais Khan, a witness to the accident. Considering the evidence of Rais Khan the ocular witness of the accident who described the manner in which the accident had taken place, the Tribunal decided the issue No. I holding "that the alleged tanker was being driven rashly and negligently by its driver at the time of the alleged accident and it had caused the death of Altaf Khan as alleged."

6. As regards issue No. 2, the Tribunal relying upon 1998 ACJ 959, D. Ram Chandran v. I. Veera holding that doctrine of non-joinder and misjoinder is not applicable in the accident claim cases. On issue No. 3 regarding the driver holding a valid driving licence the Tribunal recorded finding of fact against the Insurance Company and held that driver of the tanker had a valid driving license at the time of accident.

 

7. The last issue regarding the amount of compensation was decided by the Tribunal considering the age of the claimant No. 2. The Tribunal placed reliance upon the judgment rendered in considered ratio laid down in H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, , wherein it was laid down that if the age is between 30 to 40 years the multiplier of ''16'' should be adopted. In the instant case the age of the mother has been shown to be 40 years, the Tribunal applied multiplier of ''16'' to calculate the amount of compensation and further considering that the deceased was a skilled worker of Zari or Karchobi work earning approximately Rs. 6,000 per month and the fact that he also used to get Zari work done on Theka from others. The Tribunal on the basis of the evidence found that claim of the claimants in respect of income was on the higher side, hence minimum income of Rs. 24,000 per annum has been presumed by the Tribunal. After deduction of 1/3rd from the income for personal expenses of deceased the Tribunal calculated the compensation by applying the multiplier of ''16'' as Rs. 3,10,000 along with 6% annual interest had been awarded thus:

One-third of this amount, the deceased must have been spending on himself and so the contribution comes to 2400-800=1600 per month. The annual income thus comes to Rs. 1600 x 12 = 19,200 per annum. Now taking with multiplier it comes to 19,200 x 16 = Rs. 3,07,200. To this I add Rs. 2,000 as funeral expenses and the total amount of compensation thus comes out to be Rs. 3,09,200. In found figure I would calculate to Rs. 3,10,000 which must be awarded to the claimants.

Regarding adoption of multiplier we find that mother''s age as on record is not exceeding 40, therefore, multiplier of ''16'' has rightly been applied by the Tribunal. There being three persons claimed dependency upon the appellant, therefore, in order to arrive at fair compensation the Tribunal has rightly deducted 1/3rd towards personal and living expenses of the deceased.

8. Learned Counsel for the appellant has placed before us guidelines of Regional Minimum Wages Advisory Committees subsequently as Regional Labour Ministers'' Conference which made a number of recommendations which include reduction in disparities in minimum wages. For the State of Uttar Pradesh in northern region, keeping in view the recommendations of N.C.R.L. and subsequent rise in price index the National Floor Minimum Wage was fixed at Rs. 50 per day w.e.f. 1.9.2002. He argued that Rs. 80 is a minimum floor level in 1970, therefore, the Tribunal has committed an error in taking minimum wage at Rs. 80 per day.

9. Now we consider the question of minimum wages. What is the minimum wage fixed by the Government and what is actually being paid in the market is different and it all depends upon demand and supply formulae. It is apparent from the evidence of PW-1 that minimum wage which was being paid in the market was Rs. 80 and it fluctuated up to Rs. 100 according to the skill of the worker. It might be that on papers Rs. 50 was fixed by the State Government but

demand and supply of the labourer was available at minimum Rs. 80. Learned Counsel for the appellant has relied upon the judgment rendered in Manju Devi and Another Vs. Musafir Paswan and Another , wherein paragraphs 3 and 4 it was held thus:

3. As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000 must be taken as the income. Thus, the compensation comes to Rs. 2,25,000.

4. We accordingly modify the award to be in a sum of Rs. 2,25,000 with interest as awarded. The appeal stands disposed of accordingly. No order as to costs.

After hearing the Counsel for the parties and perusal of the record, we find that father of the deceased has stated that when he worked as labourer he was earning Rs. 80 to Rs. 100 per day, therefore, even if it is presumed that the deceased was not a skilled labourer, the minimum earning of labourer i.e. Rs. 80 per day can be taken for the purpose of calculation i.e. 80 x 30 = 2,400 per month. Moreover, we find from the judgment of the Tribunal that appellant before us had not produced any evidence in rebuttal against the claim by the claimants; that deceased was earning approximately Rs. 6,000 per month from Zari work. After considering the facts and circumstances, we find that Tribunal has itself reduced the income of the deceased from Rs. 6,000 per month to Rs. 2,400 per month.

For reasons stated above, we find that the learned Tribunal has awarded just and fair compensation to the claimant and there is no scope of interference in the award. The appeal thus fails and is, accordingly, dismissed.

The office is directed to remit the statutory amount to the concerned Tribunal within two weeks.

 