

(2011) 08 AHC CK 0176
In the Allahabad High Court
Case No : F.A.F.O. No. 877 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Siya Ram Yadav and others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 5 AWC 4678

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. Satish Chandra, J.—This is first appeal filed by the appellant United India Insurance Company Ltd. u/s 173 of the Motor Vehicles Act, 1988. against the judgment and order dated 3.9.2005. passed by the Motor Accident Claims Tribunal, Lucknow in Claim Petition No. 165/2000 where a compensation of Rs. 3,88,500 was awarded along with interest @ 6% p.a. in favour of the claimants-respondents.

2. The brief facts of the case are that on 22.2.2000 at about 7.00 p.m., deceased Jitendra Kumar Yadav was going in a tractor trolley towards his house. A Vikram Tempo No. U. P. 32-T-3797 was following the tractor trolley, whose driver was driving the tempo rashly and negligently and hit the tractor trolley, virtually the tempo entered into the trolley. The same resulted into the death of Jitendra Kumar Yadav, who was aged about 21 years. The tempo driver Anil Kayshap has lodged first information report in Police Station Gosaiganj, Lucknow at about 13.10 on 23.2.2000. A claim petition was filed before the Tribunal who found that the tempo was insured with the appellant insurance company. Finally, the Tribunal has awarded a compensation of Rs. 3,88,500 Being aggrieved, the insurance company has filed the present appeal.

3. With this background. Sri Tarun Kumar Mishra, learned counsel for the

appellant insurance company has not disputed the accident. He has also accepted that Vikram Tempo was insured with the appellant insurance company. He only disputed the multiplier applied by the Tribunal. He submits that the multiplier of 16 was wrongly applied by the Tribunal by considering the age of the deceased, who was aged about 21 years old and unmarried. Being unmarried, his age cannot be taken into consideration for determination of compensation.

4. Learned counsel further submits that on the date of accident, the age of the mother of the deceased was about 41 years and the father was about 43 years old, who are the claimants, so the age of the parents will have to be taken into consideration for determination of the multiplier. For this purpose, he has relied on the ratio laid down by the Hon"ble Supreme Court in the case of Gyan Chand Jain and another v. Permanand and others. 2003 (1) TAC 490 (SC). where the Hon"ble Apex Court observed that in the case of death of unmarried man father and mother's age will have to be considered for determination of the multiplier. According to him in the instant case, the multiplier of 15 will have to be applied by looking the age of the mother of the deceased, who was about 41 years.

5. He has taken another argument that the deceased was unmarried, so he might have met out his expenditure from the income of self, so the deduction must not be 1/3rd, but ought to be 50% of the income. Finally, he submits that the impugned order passed by the Tribunal may kindly be modified accordingly.

6. On the other hand, Sri Saket Gupta. learned counsel for the respondents relied upon the impugned order passed by the Tribunal.

7. After hearing both the parties and on perusal of the materials available on the record, it appears that the accident, insurance policy, age of the deceased are not disputed in the instant case. The only point was raised regarding the quantum of compensation. According to the learned counsel for the appellant, the multiplier of 15 is applicable by looking the age of the mother, i.e., claimant-respondent and not of the deceased as he was unmarried.

8. It may be mentioned that there are conflicting decisions regarding the multiplier. For example, the Hon"ble Supreme Court in the case of Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TAC 677 : 2009 (2) ACCD 924; 2009 (3) AWC 2138 (SC). observed that :

Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased : (b) income of the deceased : and (c) the number of dependants. The issues to be determined by the Tribunal to arrive at the loss of dependency are : (i) additions/deductions to be made for arriving at the income : (ii) the deduction to be made towards the personal living expenses of the deceased : and (iii) the multiplier to be applied with reference of the age of deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

9. In the case of Gyan Chand Jain (supra), the Hon"ble Apex Court has determined the multiplier on the basis of the age of parents who were the claimants. Thus, there are conflicting decisions on the point involved in the case. So, the beneficial provision will have to be applied.

10. In the instant case, the learned counsel for the appellant asked to apply the multiplier of 15, while the Tribunal had applied the multiplier of 16. Needless to mention that the Motor Vehicles Act is a welfare piece of legislation. The beneficial decision will have to be applied and it will make hardly any difference to apply multiplier either 15 or 16 while giving the benefit of the multiplier. Hence, we uphold the order passed by the Tribunal where the multiplier of 16 was applied.

11. Another argument of the learned counsel for the appellant was regarding 1/3rd deduction for the self expenditure by the deceased. Learned counsel asked that it must be half as the deceased was unmarried.

12. Needless to mention that 1/3rd deduction is a statutory deduction which was rightly applied by the Tribunal in the instant case. Needless to mention that the Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Deo Patodi and others. 2009 (3) TAC 614 : 2009 (3) ACCD 1421 : 2009 (4) AWC 3331 (SC). observed that indisputably, deduction of 1/3rd towards personal expenses is the ordinarily rule in India. Therefore, we think that in the facts and circumstances of the present case, the same should be applied. The concept of joint family in India (unlike the western countries where it has been wholly evaporated, although on the decline), should also be taken into consideration.

13. It may be mentioned that the Court has a duty to grant a just and reasonable compensation. What would, however, be a just and reasonable compensation depends upon the factual situation happening in each case. No hard and fast rule therefore can be laid down. The compensation should not be treated to be wind-fall. The finding required to be arrived at by the choice of multiplicand and as also the multiplier would depend upon a large number of factors as has been considered in various judgments, the same need not be reiterated.

14. In view of above, we decline to interfere with the impugned order passed by the Tribunal which is hereby sustained along with the reasons mentioned there. The Registry of this Court is directed to remit the entire amount to the concerned Tribunal. The appellant insurance company is also directed to deposit the entire amount before the Tribunal concerned within a period of two months. The Tribunal will proceed in accordance with the award. The appeal is dismissed.