
(2014) 05 AHC CK 0115
In the Allahabad High Court
Case No : F.A.F.O. No. 1359 of 2014

United India Insurance Co. Ltd.

APPELLANT

Vs

Usha

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2014) 104 ALR 880

Hon'ble Judges : Rajesh Kumar Agrawal, J; Dinesh Gupta, J

Bench : Division Bench

Advocate : V.C. Dixit, Advocate for the Appellant; O.P. Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar and Dinesh Gupta, JJ.—This appeal has been preferred against the award dated 17.1.2014 passed by Motor Accidents Claims Tribunal/District Judge, Jhansi in Motor Accident Claim Petition No. 573 of 2011. The brief facts, which give rise to this appeal are that the claimants-respondents preferred Motor Accident Claim Petition No. 573 of 2011 for compensation on account of death of her husband and father, who expired on 19.9.2011 in an accident.

2. According to the claim petition, the claimant's husband and father Ramesh Kumar met with an accident on 19.9.2011 at 8.30 p.m. at Jhansi to Lalitpur road near the village Hansari while he was going to his house from Jhansi driving scooter No. UP 93 F-7347. At that point of time from the opposite direction (from Lalitpur side) offending truck bearing Registration No. UA 04 D 4980, which was being driven rashly and negligently by its driver, hit the scooter from wrong side whereupon the deceased received grievous injuries resulting in his death. The accident occurred due to rash and negligent driving of Truck only. After the accident, the Driver of the Truck fled away.

3. It has been further pleaded that deceased was a skilled driver, who was

working as mason and used to earn Rs. 300/- to 400/- per day. It has been further stated that against the Driver of Truck, First Information Report was lodged at case crime No. 415 of 2011 under sections 279, 304-A, I.P.C. on the next day i.e., 20.9.2011. The Driver of the offending truck was bailed out and the Truck was also released by the Court. The claimants have been depending upon the income of the deceased but due to the death of the deceased, they have been deprived from their dependency.

4. The opposite party No. 1-owner of the Truck, Universal Cargo Movers Gora Pardhav Bareilly Road, Haldwani through its manager has filed its written statement.

5. It has been contended by the owner that the driver of the offending truck was going with slow speed from Lalitpur to Jhansi and he has reached near the village Hansari at about 8.00 p.m., the deceased who was driving the scooter rashly and negligently and collided with the Truck.

6. At the time of accident, the offending truck was insured with United India Insurance Company Limited-opposite party No. 2.

7. The Insurance Company has also filed written statement and also taken the same plea as has been taken by the owner of the vehicle.

8. After considering the evidence on record, the Tribunal gave a categorical-finding on issue Nos. 1 and 2 jointly and held that the accident has occurred due to rash and negligent driving by the offending truck. A categorical finding has also been recorded that at the time of accident, the scooter was being driven by the deceased to his extreme left side whereas the offending truck was being driven by its driver to extreme right side which resulted in an accident resulting grievous to the deceased, who died later on. This finding was based on perusal of site plan, which was prepared by the investigating officer of the case.

9. On the point of compensation, the Tribunal held that the claimants are entitled for compensation under the conventional head on the loss of consortium to the spouse, loss of love, care, help, guidance to the children and funeral expenses. The Court has awarded Rs.1 lac under the head of loss of consortium, Rs. 1 lac under the head of loss of care and guidance for minor children and Rs. 25,000/- for funeral expenses. The Court has taken the notional pay of the deceased at the rate of Rs. 3,000/- per month and accordingly 36,000/- per annum after deducting 1/3rd amount spent by the deceased on himself taken into the amount of Rs. 24,000/- per annum and also applying multiplier of 15 computed the compensation Rs. 3,60,000/- after adding the other compensation and total amount of Rs. 5,90,000/- have awarded to the claimants alongwith 7% interest.

10. Feeling aggrieved, the Insurance Company preferred this appeal.

11. Heard Shri V.C. Dixit, learned Counsel for the appellant and Shri O.P. Yadav, learned Counsel for the caveator. The learned Counsel for the appellant submitted that Court while deciding the issue Nos. 1 and 2 failed to consider that

it is a head on collision and as such there was contributory negligence of the scooter driver (deceased) but the Tribunal has not given any finding on contributory negligence.

12. Learned Counsel for the appellant further contended that while awarding the compensation under the conventional head on the loss of consortium to the spouse, loss of love, care, help, guidance to the children and funeral expenses, the Tribunal has failed to consider the amendment in the Motor Vehicles Act in U.P. and swayed away relying on the decision of Apex Court without taken into consideration. The case before the Apex Court was of Haryana State, and in this way, the award of compensation under the conventional head was arbitrary and highly excessive.

13. Learned Counsel for the appellant further contended that the Tribunal has wrongly relied upon the Sarla Verma's case 2009(78) AIC 153 (SC) : 2009(75) ALR 638 (SC).

14. We are unable to accept the contention raised by the learned Counsel for the appellant.

15. So far as the finding on the point of negligence is concerned, on the basis of documentary evidence and oral evidence relying on the site plan prepared by the investigating officer of the case, the Tribunal has arrived at a categorical finding that the truck was being driven by its driver to extreme right side while the scooter was being driven by the deceased to his extreme left side and it was the truck who hit the scooter going on the wrong side. This finding is based on facts and evidence.

16. Learned Counsel for the appellant has failed to show or demonstrate that there is any error in the above said finding. Now so far as the compensation is concerned, in Rajesh and others v. Rajbir Singh and others 2013 A.C.J. 1403 (S.C.), the Court has considered and observed as under:

para 20

The ratio of a decision of this Court on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, an in fact ought to be, periodically revised, as observed in Santosh Devi 2012(114) AIC 197 (SC) : 2012(92) ALR 717 (SC). We may, therefore, revisit the practice of awarding compensation under conventional heads:

- (i) loss of consortium to the spouse;
- (ii) loss of love, care and guidance to children and
- (iii) funeral expenses.

It may be noted that the sum of Rs. 2,500 to Rs. 10,000/- under those heads was fixed several decades ago and having regard to inflation factor, the same

needs to be increased. In Sarla Verma's case 2009(78) AIC 153 (SC) : 2009(75) ALR 638 (SC), it was held that compensation for loss of consortium should be in the range of Rs. 5,000/- to Rs. 10,000/-. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relation with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc. which the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world, more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least Rs. 1,00,000/- towards loss of consortium.

Para 21

We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The price index, it is a fact, has gone up in that regard also. The head funeral expenses, does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses". In the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-

17. Further, the Apex Court has considered the award of just compensation after considering all the relevant provisions under the Motor Vehicles Act, 1988. In the present case also, the Tribunal has awarded compensation, which appears to be "Just" compensation and there is no material on contrary to demonstrate that the amount of compensation is excessive or arbitrary.

18. No other point has been raised by the learned Counsel for the appellant before this Court.

19. We find no reason to interfere in the finding recorded by the Tribunal.

20. In view of the above, the appeal lacks merit and is accordingly dismissed. Office is directed to remit back the statutory amount to the concerned Tribunal with four weeks.