
(2009) 06 AHC CK 0002
In the Allahabad High Court

U.P. State Road Transport Corporation	APPELLANT
Vs	
Maqsood Alam and Another	RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) 4 AWC 3645

Hon'ble Judges : D.K. Arora, J;Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—U.P. State Road Transport Corporation has preferred this appeal against the judgment and order passed by the concerned Motor Accidents Claims Tribunal, Ghaziabad dated 5.3.2009. By the said judgment and order, a sum of Rs. 2,19,000 alongwith interest has been awarded to the parents of the deceased, who are the claimants-respondents herein.

2. By challenging the award, the appellant has contended that the deceased died as bachelor at the age of 21 years and one-third has been deducted from his monthly income on account of expenditure. It has been contended by the appellant that the deceased was unemployed. However, the same has been objected by the learned Counsel appearing for the claimants. From the judgment and award we find that the Court arrived at a monthly income of Rs. 1,000 from the private tuition after deducting a sum of Rs. 500 as expenditure and compensation has been awarded, which according to us, cannot be said to be on the higher side. However, learned Counsel appearing for the appellant relied upon a judgment in Syed Basheer Ahamed and Ors. v. Mohd. Jameel and Anr. 2009 (1) TAC 794 : 2009 (1) ACCD 343 : 2009 (1) AWC 638 (SC). Learned Counsel has contended before this Court that in absence of any evidence to the contrary, the practice is to deduct towards personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50%) if he was a bachelor. However, before coming to the conclusion, the Supreme Court has clarified the position that on the question of deduction on account of

personal expenses by the deceased, there is no set formula which could be applied in every case to determine as to what should be the deduction on this account. The contention that the deduction on that count cannot exceed one-third on the ground that there is some statutory recognition in the Second Schedule to the Act for such deduction, is untenable. The said deduction would depend upon the facts and circumstances of each case. In the case before the Supreme Court, no evidence was led on this point as well.

3. Learned Counsel for the appellant also relied on an unreported Judgment of the Supreme Court passed in Civil Appeal No. 3483 of 2008, Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. decided on 15.4.2009 2009 (2) ACCD 924 : 2009 (3) AWC 2138 (SC) and said that in case of bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically.

4. The appellant contended that in view of such judgment, the deduction should be made 50% from the income of the deceased. We are of the view that the word "normally" cannot lay down any ratio decidendi to be followed by each and every Court. This is an assumption of the Court on the basis of normal circumstances. Factually, at the time of the accident and untimely death, in that particular case, the deceased was 38 years, working as a Scientist in the Indian Council of Agricultural Research. He was married having three minor children, parents and grandfather at the time of death. Therefore, under no circumstances, this case is supporting the appellant. Apart from that, as soon as the claimant and the appellant takes plea that the appellant is non-earning person then the 2nd Schedule u/s 163A of the Motor Vehicles Act, which is normally followed, for such type of claim cannot be made to be applicable. It should be fixed on the basis of the notional income under item 6 of such schedule to which no deduction can be made which has been specifically decided by the Division Bench of this Court in The New India Assurance Company Limited Vs. Padam Singh, Smt. Munesh Devi and Satpal Singh, Therefore, under no circumstances, we are able to pass any affirmative order in favour of the appellant hence the appeal is dismissed at the stage of admission, however, without imposing any cost.

5. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000 made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

D.K. Arora, J.

I agree.