(1985) 10 AHC CK 0029

In the Allahabad High Court

U.P. State Road Transport Corporation APPELLANT

Vs

Yashoda Devi and Others RESPONDENT

Date of Decision : 17-10-1985

Acts Referred:

Citation : (1986) 2 ACC 419

Hon'ble Judges : Om Prakesh, J

Bench : Single Bench

Judgement

Om Prakash, J.—This is a bunch of three first appeals from a common order dated 25th January, 1979, of the Motor Accidents Claims Tribunal, Meerut (hereinafter to be referred to as ''the Tribunal'').

2. The deceased, namely, Kishan Chand. boarded the Roadways bus no. 9489 UST running from Delhi to Hardwar for Kumbh Mela on 12-4-1974, and at about 9.30 p.m. on the said date, the said bus and a truck no. 2050 UST coming from Saharanpur to Meerut dashed into each other near Modipuram. The accident caused injuries to several passengers travelling in the but, who were admitted, along with Kishan Chand in the Civil Hospital of Meerut, where Sri Kishan Chand succumbed to his injuries on 13-4-1974 at about 5,45 p.m. Thereupon, his widow, children and mother claimed a compensation of Rs. 1,00,000/- before the Tribunal. The Tribunal, however, awarded the compensation at Rs. 53,000/- by the order dated 25-1-1979.

3. Against the order three appeals have been filed:

(i) by the Uttar Pradesh State Road Transport Corporation (Briefly, the UPSRTC);

(ii) by the Insurer; and

(iii) by the truck owner.

4. Involving a common issue, all the three appeals are consolidated and disposed of together.

5. I have heard learned Counsel for the appellants only, as none appeared from the claimants even after the list was revised.

6. The claimants claimed pecuniary loss at Rs. 50,000/-. Besides pecuniary loss the claimants claim compensation on several other counts. The Tribunal found that both the driver of the UPSRTC and the driver of the truck were engaged in rash driving on 12-4-1974 at the time when the accident occurred. Then it was held that the monthly earning of the deceased from the job of part time accountant with several concerns was Rs. 400/- per month. The deceased died at the age of 45 years. the Tribunal, considering the average life span of the deceased at 65 years, held that he would have earned a sum of Rs. 96,000/- in the remaining 20 years of his life, Allowing deduction of 1 /3rd on his personal expenditure, the Tribunal found that he would have contributed to the family a sum of Rs. 64,000/-. Further deducting a lump sum of Rs. 14,000/- for uncertainty of life, the Tribunal took the view that a sum of Rs, 50,000/- claimed as pecuniary loss was quite reasonable. the Tribunal further awarded a sum aggregating to Rs. 3,000/- for loss of consortium, love and affection and for pain and suffering. This is how a total compensation of Rs. 53,000/- was awarded.

7. The submission of learned Counsel appearing on behalf of the UPSRTC is that the longevity having not been proved by any cogent evidence by the claimants, the Tribunal should have taken the average of longevity at 60 years only and, therefore, the multiplier 15 should have been applied instead of the multiplier 20. The point is whether the Tribunal was wrong in taking the average life span of 65 years. I do not see any infirmity in the finding of the Tribunal. Now a days, the average life span of 65 years cannot be doubted. There is no hard and fast rule that if the longevity has not been proved by the claimants by any cogent evidence, then the longevity could not be taken more than 60 years. 65 years average life is quite reasonable and, therefore, the earning of the deceased was rightly multiplied by 20, as the deceased died at the age of 45 years.

8. It was also argued that the amount of compensation is so heavy that if the same is put in the fixed deposit, then the interest itself would be much more than what was earned by the deceased and the capital will never be deleted. The reasonableness of the compensation, in my opinion, has rightly been tested by the Tribunal, considering the monthly income of the deceased, his average life span and the reasonable deductions. The basis adopted by the Tribunal to judge the reasonableness cannot be said to be erroneous or illegal and, therefore, it is irrelevant to see whether by depositing the entire amount of compensation under the fixed deposit scheme, the capital will be deposited or not and whether the interest incurred will be more than the monthly earning of the deceased.

9. It was also argued by learned Counsel that it was the truck driver, who was rash and negligent in driving, and not the driver of the bus of the UPSRTC. Only the bus driver, DW 1, Albert Singh, was examined by the UPSRTC. In the circumstances of the case, his denial can well be expected. There is nothing to corroborate his testimony and, therefore, on his version, it cannot be concluded

that the accident occurred only due to the negligence of the track driver. No better is the position of the truck driver, who also denied his negligence DW 3 Abdul Salam was also examined by the truck owner, but his testimony was rejected by the Tribunal on the ground that he belonged to the same place where the truck owner resides. Also it is observed by the Tribunal, that it is not borne out by the record that Abdul Salam travelled in the bus of the UPASTC. On these facts, Abdul Salam cannot furnish any corroboration. So, the only testimony of the truck driver is an weak evidence as the evidence of bus driver. The Tribunal was, therefore, right in holding that both the bus driver and the truck driver were negligent while driving.

10. Learned Counsel for the Insurance Company then argued that according to the case of claimants themselves they would have received Rs. 50,000/- as pecuniary benefit in another 35 years from the deceased. So, the monthly average, he says, will come to about Rs. 125/- only and, therefore, the Tribunal was wrong in calculating the compensation considering the monthly earning of Rs. 400/-. This argument is wholly fallacious. The question before the Tribunal was whether the pecuniary loss claimed at Rs. 50,000/- is reasonable. The Tribunal devised a method to test the reasonableness of the claim of pecuniary loss and, as already held, the method adopted by the Tribunal for calculating the compensation cannot be said to be erroneous or illegal. Monthly earning of Rs. 400/- is not unsupported by the record, as the Tribunal has a1verted to the evidence of the accountants of the deceased employers, which cannot be doubted. So, the monthly earning as determined by the Tribunal was not a figment of imagination.

11. So, the contentions made by learned Counsel for the UPSRTC and Insurance Company fail and are rejected, No separate contention was raised for and on behalf of the truck owner.

12. In the result, all the three appeals fail and are dismissed. The order of the trial court dated 25.1.1979 is confirmed. There will be no order as to costs, as none appeared on behalf of the claimants.

