

(2013) 11 AHC CK 0162
In the Allahabad High Court
Case No : F.A.F.O. No. 313 of 2011

Yaqoob

APPELLANT

Vs

Rakesh Gupta

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 2 ACC 366

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Nobody responded on behalf of the respondent though the name of Sri Harpal Singh Chadha has been printed in the cause list. Heard Mr. Rajendra Jaiswal, learned Counsel for the appellant.

2. Present appeal has been filed by the appellant-claimant, for the enhancement of the compensation, u/s 173 of the Motor Vehicles Act, 1988, against the judgment and order dated 4th September, 2010, passed by the Motor Accident Claims Tribunal, Lakhimpur Kheri, in Claim Petition No. 136 of 2009.

3. The brief facts of the case are that on 21st November, 2008, at about 6.00 p.m., the appellant was going on his cycle to his house. When he reached near Bilariya village, from the opposite direction, a tempo bearing Number U.P. 34C/0764 was coming, whose driver was driving it carelessly, rashly and negligently and dashed the cycle of the appellant. The appellant got the injuries and his cycle was damaged. A criminal case No. 2405 of 2008 was registered in the police station. The said tempo was insured with the opposite party No. 2 i.e. New India Insurance Company Ltd. On the date of accident, the policy was alive. The appellant got the treatment at various places and finally, the Chief Medical Officer, Lakhimpur Kheri has issued a certificate, whereby 40% permanent disability was declared. The appellant-claimant has filed a claim petition before the Tribunal, who after examining the entire evidence has awarded a total

compensation of Rs. 39,000. Not being satisfied, the appellant has filed the instant appeal.

4. Heard Mr. Rajendra Jaiswal, learned Counsel for the appellant and Mr. Satendra Nath Rai, learned Counsel for the owner i.e. opposite party No. 1. None appeared on behalf of the opposite party No. 2 i.e. New India Assurance Company Ltd., though the name of the Counsel is printed in the cause list.

5. By considering the totality of the facts and circumstances of the case, it appears that the Tribunal has taken the income of Rs. 4000 per month i.e. Rs. 48,000 per annum. By looking the age of the appellant i.e., 65 years, the multiplier of 5 will have to be applied. Thus, the compensation comes to Rs. $48,000 \times 5 = \text{Rs. } 2,40,000$. Out of it, the appellant is entitled for 40% i.e., Rs. 96,000 due to permanent disability. So, the net compensation comes to Rs. 96,000. In addition, the appellant is entitled for Rs. 15,000 + Rs. 8,000 = Rs. 23,000 for medical expenses and pain, etc., as held by the Tribunal. Thus, the total compensation comes to Rs. $96,000 + \text{Rs. } 23,000 = \text{Rs. } 1,19,000$, which will have to be paid in terms of the award along with the interest @ 6% from the date of filing of the claim petition before the Tribunal. For this purpose, the impugned order is modified accordingly.

6. Hence, the opposite party No. 2-New India Assurance Company Ltd. is directed to deposit full/remaining amount before the Tribunal, within a period of one month.

7. The Registry of this Court is also directed to transmit the amount/record, if any, to the concerned Tribunal, within a period of one month. The Tribunal is further directed to disburse the amount in terms of the award, within a period of three months thereafter. In the result, the appeal filed by the appellant-claimant is partly allowed.