

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2118 of 2004

Appellant :- Smt. Kanchan Agarwal And Others

Respondent :- Oriental Insurance Co. Ltd. And Another

Counsel for Appellant :- Ram Singh,P.K. Agarwal

Counsel for Respondent :- Anita Srivastava

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present appeal has been filed by the claimants/appellants for enhancement of compensation against the judgement and award dated 06.05.2004 passed by the Motor Accident Claims Tribunal/Additional District Judge-VI, Bareilly in M.A.C.P. No.270 of 2002.

3. Challenging the said award, learned counsel for the appellant has contended that the accident had taken place on 21.03.2002. It is stated that the deceased was engaged in cloth business and the Tribunal has erred in law in holding the notional income of the deceased to be Rs.1500/- per month i.e. Rs.18,000/- per annum. It is submitted that it is common knowledge that in the year 2002, the income of a person who was engaged in cloth business was not less than Rs.2500/- per month i.e. Rs.30,000/- per annum, and thus, the Tribunal should have taken Rs.2,500/- per month as income of the deceased instead of Rs.1500/- per month. It is contended that no amount towards future prospect has been awarded by the Tribunal, whereas considering the age of of the deceased, i.e. 40 years, the claimants/appellants are entitled to 40% towards future prospect in view of the judgement of Apex

Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680**. It is further contended that there were four dependents upon the deceased, therefore, considering the judgement of the Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 121**, Tribunal should have deducted 1/4 towards personal expenses of the deceased instead of 1/3. Lastly, it is submitted that a very meagre amount of Rs.2,500/- has been awarded by the Tribunal towards loss of estate, whereas claimants/appellants are entitled to Rs.10,000/- towards the aforesaid head.

4. Per contra, learned counsel for the respondents submits that the compensation awarded by the Tribunal is just and proper hence, the same does not call for interference by this Court in the appeal.

5. I have considered the rival submissions of the parties and perused the record.

6. The submission of learned counsel for the claimants/appellants with regard to the income of the deceased has got force, therefore, this Court holds that the compensation shall be computed by taking the income of the deceased to be Rs.2,5000/- per month, i.e., Rs.30,000/- per annum in place of Rs.1500/- per month i.e., Rs.18000/- per annum.

7. The submission of learned counsel for the claimants/appellants in respect of future prospect has got force in view of the judgement of Apex Court in the case of **Pranay Sethi (supra)** and thus, following the aforesaid judgement of Apex Court, claimants/appellants are entitled to 40% towards future prospect considering the age of the deceased and further damages awarded by the Tribunal towards loss of estate is enhanced from Rs.2,500/-

to Rs.10,000/-.

8. The submission of learned counsel for the claimants/appellants with regard to deduction of 1/4 towards personal expenses of the deceased in view of the judgement of Apex Court in the case of **Sarla Verma (supra)** has got substance. Thus, it is provided that 1/4 should be deducted towards personal expenses of the deceased instead of 1/3 from the income of the deceased for computation of compensation.

9. The enhanced amount of award shall carry 6% interest from the date of the institution of claim petition till the date of its payment.

10. For the reasons given above, the appeal is partly allowed and award of the Tribunal is modified to the extent as indicated above.

10. The Insurance Company is directed to pay the enhanced amount of compensation to the claimant/appellant within a period of three months from the date of production of certified copy of this order. There shall be no order as to cost.

Order Date :- 30.10.2023

NS