

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1179 of 2008

Appellant :- Smt. Anita Rana And Others

Respondent :- Ram Sharan And Others

Counsel for Appellant :- Rakesh Kumar Gupta, Pranab Kumar Ganguli, Saurabh Vishwakarma

Counsel for Respondent :- Arun Kumar Pandey, Sudhir Kumar Agarwal

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the claimants/appellants and learned counsel for the respondents.
2. The present appeal has been filed by the claimants/appellants for enhancement of compensation.
3. Challenging the award, learned counsel for the appellants has contended that the tribunal has recorded a finding that the deceased who was riding motorcycle met with accident with tata sumo No.UP12C/3151 and died in the accident. It is submitted that the death of the deceased in the accident is not disputed. However, the tribunal has erred in law in holding that the accident had taken place due to sole negligence of the deceased. It is submitted that the finding of the tribunal on the issue of negligence of the deceased in the accident is perverse and against the record inasmuch as the said finding is based upon no evidence on record. It is submitted that the appellants have produced PW 3 Ashok Kumar who was eye witness of the accident, deposed that the accident had taken place due to rash and negligent driving of driver of tata sumo and in

absence of any evidence on record rebutting the testimony of PW 3 Ashok Kumar, the tribunal has erred in law in discarding the testimony of PW 3 Ashok Kumar and concluding that the accident had taken place due to rash and negligent driving of driver of tata sumo.

4. Learned counsel for the claimants-appellants has submitted that the accident had taken place on 08.08.2004 and the tribunal has erred in awarding a fixed compensation of Rs.50,000/- to the claimants-appellants. It is submitted that tribunal should have taken Rs.36,000/- per annum as income of the deceased for computing the compensation in view of the judgement of Apex Court in the case of **Laxmi Devi and Others Vs. Mohammad Tabbar and Another, 2008 AICC 915 (SC)**. It is further submitted that no amount towards future prospect has been awarded by the tribunal whereas, considering the age of the deceased, 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**.

5. It is further submitted that 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 1/4th towards personal expenses of the deceased. He has further contended that age of the deceased was 29 years at the time of accident,

therefore, Tribunal ought to have applied the multiplier of 17.

6. Learned counsel for the respondents has contended that the tribunal gave elaborate reasons in concluding that the testimony of PW 3 Ashok Kumar is not relevant and it is borne from the record that the accident was result of sole negligence of the deceased. It is submitted that the finding of the tribunal on the issue of negligence is based upon proper appreciation of facts and evidence on record and does not call for any interference by this Court. It is submitted that the compensation awarded by the tribunal is just and adequate and does not call for any interference by this Court in its appellate jurisdiction.

7. Be that as it may, the record reveals that the claimants lodged an F.I.R. with regard to such accident and the post mortem of the deceased was also conducted. The claimants-appellants produced PW 3 Ashok Kumar who was eye witness of the accident who stated on oath that the accident was result of sole negligence of driver of tata sumon. The record further reveals that the tribunal without giving any cogent reason discarded the testimony of PW 3 Ashok Kumar and recorded a finding that the accident was result of sole negligence of the deceased without there being any evidence on record showing that the accident was due to sole negligence of the deceased. In such view of the fact, the finding of the tribunal holding that the accident was result of negligence of the deceased is perverse and against the record inasmuch as the claimants-appellants proved the negligence

of driver of tata sumo in the accident by producing PW 3 Ashok Kumar and there was no evidence on record in rebuttal to the testimony of PW 3 Ashok Kumar. Accordingly, the finding of the tribunal holding negligence of the deceased in the accident is set aside. Consequently, it is held that the accident was result of sole negligence of driver of tata sumo in the accident.

8. The Apex Court in the case of **Laxmi Devi and Others (supra)** has held the notional income to be Rs.3000/- per month i.e. Rs.36,000/- per annum and thus, accepting the submission of learned counsel for the claimants/appellants in view of the judgement of Apex Court in the case of **Laxmi Devi (supra)**, it is provided that the income of the deceased should be taken to be Rs.36,000/- per annum for the purpose of computation of compensation.

9. The submission of learned counsel for the appellants/claimants in respect of future prospect and grant of non-pecuniary expenses has also 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, the claimants/appellants are entitled to 40% towards future prospect considering the age of the deceased.

10. The submission of learned counsel for the claimants/appellants with regard to deduction of 1/4th 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, considering the dependents upon the deceased, it is provided that 1/4th should be deducted towards personal expenses of the deceased from the income of the deceased for computation of compensation.

11. The submission of learned counsel for the claimants-appellants in respect of application of multiplier has also substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that the compensation should be computed by applying the multiplier of 17.

12. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till its payment.

13. For the reasons given above, the appeal is **partly allowed** and award of the tribunal is modified to the extent as indicated above.

Order Date :- 1.11.2023

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