

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 515 of 1999

Appellant :- National Insurance Co. Ltd.

Respondent :- Sushil Kumar Sharma And Another

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- Madhav Jain,B.P.Agarwal

With

Case :- FIRST APPEAL FROM ORDER No. - 1124 of 1999

Appellant :- Sushil Kumar Sharma And Another

Respondent :- Netrapal Rawat And Others

Counsel for Appellant :- Madhav Jain

Counsel for Respondent :- Arvind Kumar,A.K. Sharma,R.N. Sharma

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants and learned counsel for the claimants/respondents
2. Since both the appeals arise out of the common judgement, therefore, both the appeal are being decided by this common judgement.
3. The F.A.F.O. No.515 of 1999 has been filed by the appellant-Insurance Company against the award dated 25.02.1999 passed by Motor Accident Claims Tribunal/IV Additional District Judge, Agra in M.A.C.P. No.1092 of 1997 & F.A.F.O. No.1124 of 1999 has been filed by the claimants for enhancement against the award dated 25.02.1999 passed in M.A.C. Case No.1092 of 1997.
4. Challenging the said award, learned counsel for the appellant-Insurance Company has contended that in the instant case, the

deceased was admittedly standing near the gate of the offending bus. It is submitted that there was number of vacant seats in the bus and she was asked by the conductor of the bus to sit on a vacant seat but she did not listen to the request of the conductor and continued to stand near the gate of the bus. It is submitted that because of the poor and bad condition of the road, the bus jumped, due to which the deceased could not manage herself and fell from the bus and came under the wheels of the bus. It is further submitted that in the accident, there was no negligence of the driver of the bus as the bus jumped because of the bad road condition, and the accident was the result of sole negligence of the deceased inasmuch as she was standing on the gate of the bus at her risk. Accordingly, it is submitted that the Tribunal has erred in law in holding the negligence of the deceased to the extent of only 30% in the accident, whereas the Tribunal should have decided the issue of negligence in favour of the appellant and against the claimant. It is further contended that the salary of the deceased was not proved in accordance with law, and therefore, the compensation awarded by the Tribunal is excessive.

5. Per contra, learned counsel for the claimants/respondents has contended that the accident was the result of rash and negligent driving of the driver of the bus, inasmuch as if the road conditions were bad, he should have taken enough precaution to drive the bus in order to avoid untoward incident. It is contended that if the driver had been driving the bus in moderate speed even if the road conditions were bad, the bus could not have jumped causing accident. Accordingly, it is submitted that there was no negligence of the deceased in the accident and the Tribunal has erred in law in holding 30% negligence of the deceased in the accident. It is further contended that the deceased was a Government servant and

was aged about 35 years at the time of accident, and the Tribunal has erred in law in not awarding any amount towards future prospect, whereas considering the age of the deceased, the claimants are entitled to 50% 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 the Tribunal has erred in law in applying the multiplier of 15, whereas the Tribunal ought to have applied the multiplier of 16 considering the age of the deceased in view of the judgement of the Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 121**. Lastly, it is contended that there were five dependents upon the deceased, therefore, considering the judgement of the Apex Court in the case of **Sarla Verma (supra)**, Tribunal should have deducted 1/4 towards personal expenses of the deceased instead of 1/3.

6. Be that as it may, the admitted case of the appellant Insurance Company is that because of the poor conditions of the road, the bus jumped, due to which the deceased fell from the bus, which itself indicates that the driver of the bus was driving the bus at the high speed. The driver of the passenger carrying bus was expected to take all precautions in driving the bus, so that he should not lose control over the bus causing any untoward incident. If the driver of the bus had been driving the bus with a moderate speed, he would have control over the bus, and even if the road conditions were poor, the bus would not have jumped causing accident. It is also admitted that though the deceased was standing near the gate inside the bus, and because of the jump of the bus she could not manage herself and fell from the bus. In such view of the fact, the submission of learned counsel for the appellant Insurance

Company is misconceived and is rejected. This Court finds substance in the submission of learned counsel for the claimants that the accident was the result of rash and negligent driving of the driver of the bus.

7. So far as the contention of learned counsel for the appellant Insurance Company that the claimant did not prove the salary certificate, the Court may note that the deceased was a Government employee and filed salary certificate issued by the competent authority and the appellant Insurance Company did not dispute the fact that the deceased was a Government employee. In such view of the fact, the issue of quantification raised by the appellant Insurance Company is not sustainable and is rejected.

8. Now, coming to the submission of learned counsel for the claimant in respect to enhancement of compensation is concerned, this Court finds substance in the argument of learned counsel for the claimant.

9. 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, this Court holds that the claimants/appellants are entitled to 50 % towards future prospect considering the age of the deceased.

10. The submission of learned counsel for the claimants/appellants in respect to multiplier of 16 has got substance, and thus, following the judgement of the Apex Court in the case of **Sarla Verma (supra)**, this Court holds that enhanced compensation should be calculated by applying the multiplier of 16 instead of 15.

11. The submission of learned counsel for the claimant/appellant 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.

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

13. Thus, for the reasons given above, the appeal of the appellant Insurance Company i.e.F.A.F.O No.515 of 1999 is **dismissed**.

14. The appeal of the claimants i.e. F.A.F.O. No.1124 of 1999 is partly allowed and award of the Tribunal is modified to the extent as indicated above. The insurance company is directed to pay the enhanced amount of compensation to the claimants/appellants 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

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