

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1132 of 1998

Appellant :- Smt. Kashmiri Devi And Others

Respondent :- M/S Ratan Prakashan Mandir And Others

Counsel for Appellant :- Madhav Jain

Counsel for Respondent :- Sanjay Agarwal, B.N. Agarwal, Vipul Kumar

Hon'ble Saral Srivastava, J.

1. Heard Sri Madhav Jain, learned counsel for the claimants/appellants and Sri Vipul Kumar, learned counsel for the respondents.

2. The present appeal has been preferred by the claimants/appellants for enhancement of award dated 05.09.1998 passed by the Motor Accident Claims Tribunal/XIVth Additional District Judge, Agra (hereinafter referred to as 'Tribunal') in M.A.C.P. No.589 of 1996.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that it is admitted on record that deceased-Ranvir Singh had died in an accident with offending vehicle i.e. Metador No.U.P.-80-9632. It is submitted that death of the deceased in the accident with offending vehicle itself indicates a fact that driver of the offending vehicle was driving the offending vehicle rashly and negligently causing the accident and as such, the finding of the Tribunal that claimants/appellants failed to prove any negligence of the driver of the offending vehicle in the accident is perverse and against the record. It is contended that in such view of the fact, the claimants/appellants are entitled to compensation.

4. It is further contended that accident had taken place in the year 1996 and the deceased was servant in a wine shop and used to earn Rs.7,000/- per month. It is submitted that even if there was no proof of income of the deceased on record, the Tribunal ought to have taken Rs.15,000/- per annum as notional income of the deceased for computing the compensation. It is further submitted that no amount towards future prospect has been awarded by the Tribunal to the claimants/appellants whereas considering the age of the deceased i.e. 28 years, 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 submitted that considering the age of the deceased, Tribunal should have applied the multiplier of 17 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** in computing the compensation. Lastly, it is urged that there were five dependants upon the deceased, therefore, considering the judgement of the Apex Court in the case of **Sarla Verma (supra)**, Tribunal should have deducted 1/4th towards personal expenses of the deceased.

5. Per contra, learned counsel for the respondents would contend that Tribunal has given cogent reasons in concluding that claimants/appellants have failed to prove the negligence of driver of the offending vehicle in the accident. It is submitted that since claim petition has been instituted under Section 166 of Motor Vehicles Act, therefore, it was incumbent upon the claimants/appellants to prove the negligence of the driver of the offending vehicle to get the compensation. Accordingly, it is submitted that claimants/appellants have failed to make out any ground for interference by this Court in appeal.

6. Be that as it may, as per the claimants/appellants' case, the deceased was travelling in offending vehicle i.e. Metador which turn turtled and deceased suffered injuries and died. In order to prove the accident, claimants/appellants produced P.W.2, eye witness of the accident. However, as per the case of the owner of the offending vehicle, the deceased came abruptly in front of the offending vehicle and was hit by the offending vehicle. So the fact that deceased had died in the accident with offending vehicle is also admitted by the owner.

7. The question whether there was negligence of the driver of the offending vehicle in the accident, this Court may note that even if presuming the case of the owner to be correct that deceased came abruptly in front of the offending vehicle and met with the accident, if the driver of the offending vehicle was driving the offending vehicle carefully and cautiously under the control, he could have stopped the offending vehicle and accident could have been avoided. The Tribunal has failed to appreciate this aspect of the matter while holding that claimants/appellants have failed to prove the negligence of driver of offending vehicle in the accident. In such view of the fact, this Court finds that the finding of the Tribunal that the claimants/appellants failed to prove the negligence of driver of offending vehicle in the accident is based on no evidence on record, and thus, being a perverse finding is

liable to be set aside.

8. Accordingly, this Court, for the reasons given above, is of view that the accident had occurred due to sole negligence of driver of offending vehicle.

9. The submission of learned counsel for the claimants/appellants in respect of assessment of income of the deceased has substance. Accordingly, it is provided that Tribunal should have taken the income of the deceased to be Rs.15,000/- for the purpose of computation of compensation.

10. The submission of learned counsel for the claimant/appellant in respect of future prospect and 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 claimants/appellants, considering the age of the deceased, are entitled to 40% towards future prospect.

11. So far as the submission of learned counsel for the claimants/appellants in respect of application of multiplier is concerned, the said submission is also supported by the judgement of Apex Court in the case of **Sarla Verma (supra)** and thus, it is provided that enhanced amount of compensation shall be computed by applying the multiplier of 17.

12. 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, it is provided that 1/4th should be deducted towards personal expenses of the deceased from the income of the deceased for the purpose of computation of compensation.

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

14. Thus, for the reasons given above, the appeal is partly **allowed** and the award of the Tribunal is modified to the extent 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 a certified copy of this order. There shall be no order as to costs.

Order Date :- 27.10.2023/Sattyarth