

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3374 of 2004

Appellant :- The O.I.C. Ltd. Thru Its Div. Manager Divisional Office

Respondent :- Smt. Anand Prabha Agnihotri And Others.

Counsel for Appellant :- Mithilesh Kumar Tiwari

Counsel for Respondent :- Anil Kumar Sharma, Rajeev Chaddha, Rakesh Kumar Porwal

Hon'ble Saral Srivastava, J.

1. Heard Sri M.K. Tiwari, learned counsel for the appellant and Sri R.K. Porwal and Sri Rajeev Chaddha, learned counsel for the respondents.
2. The present appeal has been filed by the appellant against the award dated 15.10.2004 passed by Motor Accident Claims Tribunal/Special Judge (S.C./S.T. Act), Kanpur Nagar in MA.C.P. No.85 of 2000.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was driving the maruti car bearing registration No.U.P.78-K-8350 which met with an accident with truck No.U.P.32-T-1886. It is submitted that both the vehicles were coming from opposite directions and it was a case of head on collision, therefore, the deceased was also negligent in the accident. Consequently, it is submitted that the Tribunal has erred in law in holding the sole negligence of the driver of the truck in the accident. It is submitted that the Tribunal should have apportioned the negligence equally to the drivers of both the vehicles considering the fact that the manner in which the accident took place reveals that there was 50% negligence of the deceased in the accident. It is further submitted that the compensation awarded by the Tribunal is excessive, inasmuch Tribunal has erred in law in adding the agricultural income as well as income earned from the HUF in the income of the deceased for the purpose of quantification of compensation. Accordingly, it is submitted that the compensation awarded by the Tribunal is excessive and not sustainable in law.

4. Per contra, learned counsel for the respondents would contend that PW2 and PW3 appeared as eye witness of the accident and proved that the accident was the result of negligence of the driver of the truck. The Insurance Company did not lead any evidence in rebuttal to the testimony of PW2 and PW3. Thus, it is submitted that the finding of the Tribunal on the issue of negligence of driver of the truck in the accident is based upon proper appreciation of facts and evidence on record and is not liable to be interfered with by this Court. It is further submitted that the claimants/respondents have proved the income of the deceased by filing the Income Tax Return for the Assessment Year 1998-99, and thus, the Tribunal has not committed any illegality in assessing the compensation.

5. Be that as it may, the Tribunal in recording the finding that the accident was the result of sole negligence of the driver of the truck placed reliance upon the testimony of PW2 and PW3 who were eye witness of the accident. The Insurance Company did not lead any evidence in rebuttal to the testimony of PW2 and PW3. The other documentary evidence on record also corroborate the testimony of PW2 and PW3, therefore, the finding of the Tribunal in respect to negligence of the driver of the truck is based upon proper appreciation of facts and evidence on record and does not call for any interference by this Court.

6. So far as the issue of quantification is concerned, the Court has perused the record of the case and finds that the Income Tax Return of the deceased for the Assessment Year 1998-99 was filed on record which discloses the income of the deceased to be Rs.1,91,510/- and also Rs.35,000/- as agricultural income. The Court also finds in the record the Income Tax Return of the HUF of the deceased which discloses the HUF income was Rs.40,000/- However, this Court is of the opinion that the income shown in the Income Tax Return of the HUF was not an individual income of the deceased.

7. When a query was put to the learned counsel for the claimants/respondents as to what was source of income of Rs.40,000/- disclosed in the Income Tax Return, Sri Porwal, learned counsel for the respondents submits that it was the income earned from the property of the family, and because of the death of the deceased, the

property of the family was to be sold to discharge the debt taken by the deceased, and thus, it shall be treated to be a loss of income.

8. The submission of learned counsel for the respondents does not appeal to the conscious of the Court, inasmuch as Rs.40,000/- income from the HUF shown in the Income Tax Return for the Assessment Year 1998-99 was an income from the ancestral property of the deceased and was not an individual income.

9. It is also pertinent to note that the income earned from the ancestral property cannot be treated to be a loss of income to the family inasmuch as even after the death of the deceased, the income from the property shall continue to come in the hands of the dependents of the deceased. The said income cannot be counted for the purpose of calculation of compensation on the premise that to discharge the loan taken by the deceased the properties were sold inasmuch as the compensation is paid to the dependents of the deceased for the loss of actual dependency of the family of the deceased on the income of the deceased.

10. It is also pertinent to note that no evidence was brought on record to indicate that the deceased had taken any loan, and to discharge the loan amount, the properties were sold. The testimony of claimant/respondent no.1 Smt. Anand Prabha Agnihotri (PW1) is not supported by any documentary evidence on record and is not a credible evidence. Therefore, this Court is of the view that addition of Rs.40,000/- from the HUF income in the income of the deceased for the purpose of computation of compensation is wrong. Accordingly, this Court holds that the compensation shall be computed by taking the income of the deceased to be Rs.2,26,510/- in place of Rs.2,66,510/-

11. Thus, for the reasons given above, the appeal stands partly **allowed**. The award of the Tribunal is modified to the extent indicated above.

Order Date :- 31.10.2023

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