

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1384 of 2003

Appellant :- United India Insurance Co. Ltd.

Respondent :- Smt. Sarda Devi And Others

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- Ram Singh, B.P. Singh, Ram Naresh Singh, Shive Datta Yadav, Suresh Singh

Hon'ble Saral Srivastava, J.

Order on Civil Misc. Delay Condonation Application No.8 of 2022 in Cross Objection No.107251.

There is delay of about 18 days in filing the cross objection No.107251.

The claimants/cross objector have filed delay condonation application for condoning the delay in filing the cross objection.

The claimants/cross objector have explained the delay properly in filing the cross objection.

Hence, in the interest of justice, delay is condoned.

Consequently, the delay condonation application is **allowed**.

Order on Appeal.

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

2. The present appeal has been filed by the appellant challenging the award dated 31.03.2003 passed by Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fatehpur in

M.A.C.P. No.135 of 2002.

3. The claimants/respondent Nos.1 to 6 have also filed Cross Objection No.107251 of 2003 for enhancement of compensation.

4. Challenging the award, learned counsel for the appellant has contended that the offending vehicle was bus No.UGG-0385. It is submitted that the offending vehicle was a transport vehicle, therefore, the driver should have been authorized to drive transport vehicle whereas in the instant case, it is evident from the driving licence filed by the respondent owner that the driver was holding a driving licence to drive only light motor vehicle. Accordingly, it is submitted that the driver of the vehicle was not holding a valid driving licence at the time of accident. Thus, the owner has committed breach of insurance policy and the insurance company is entitled to right of recovery. It is further contended that the Tribunal has erred in law in applying multiplier of 35 in computing the compensation whereas in view of the settled law, maximum multiplier which could be applied is 18, and thus, the computation of compensation is also not sustainable in law.

5. Sri Suresh Singh, learned counsel for the owner submits that the driving licence of the driver was filed on record which shows that it was valid on the date of accident. Accordingly, it is submitted that the Tribunal has rightly decided the issue of driving licence in favour of the owner.

6. Learned counsel for the claimants/cross objector would contend that the compensation awarded by the Tribunal is not adequate inasmuch as the accident had taken place in the year 2002 and the Tribunal should have taken at least Rs.2000/- per month as income of the deceased in place of Rs.1200/- per month. It is further

contended that no amount towards future prospect has been awarded by the Tribunal whereas considering the age of the deceased, claimants/cross objector 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 there were six 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. Lastly, it is submitted that the claimants/cross objector are entitled to Rs.15,000/- towards the non-pecuniary damages.

7. I have considered rival contentions of learned counsel for the parties and perused the record.

8. So far as the issue of driving of driving licence is concerned, the perusal of paper No.13-Ga reveals that there is endorsement by the transport authority authorizing the driver to drive transport vehicle from 03.11.2001 to 02.11.2004. Since the accident had taken place in the year 2002, therefore, on the date of accident the driving licence of the driver was valid. Accordingly, this Court is of the view that the finding of the Tribunal on the issue of driving licence is based upon proper appreciation of evidence on record and does not call for any interference by this court.

9. This Court finds that the submission of learned counsel for the appellant that the multiplier of 35 applied by the Tribunal is wrong has substance in view of the judgment of Apex Court in the case of **Sarla Verma (supra)**. Accordingly, it is provided that the entire compensation shall be computed by applying multiplier of 18 in

place of 35 considering the age of the deceased.

10. The submission of learned counsel for the claimants/cross objector 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.24,000/- per annum instead of Rs.14,400/- for the purpose of computation of compensation.

11. The submission of learned counsel for the claimants/cross objector 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/respondents are entitled to 40% towards future prospect considering the age of the deceased.

12. So far as the submission of learned counsel for the claimants/cross objector with regard to deduction of 1/4th towards personal expenses is concerned, the same has substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that 1/4th should be deducted towards personal expenses of the deceased on the entire amount of compensation.

13. The submission of learned counsel for the claimants/cross objector in respect of grant of non-pecuniary damages has got force and thus, the Court awards Rs.15,000/- towards non-pecuniary damages.

14. 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.

15. Thus, for the reasons given above, the appeal of the Insurance

Company is ***partly allowed*** and the cross objection filed by the claimants/cross objector is ***partly allowed***. The award of the Tribunal is modified to the extent indicated above. The Tribunal is directed to recalculate the award afresh. The insurance company is directed to pay the enhanced amount of compensation to the claimants 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 :- 16.10.2023

R.S. Tiwari