

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1999 of 2002

Appellant :- The New India Assurance Co. Ltd.

Respondent :- Dr. Lalit Mohan Gupta And Others

Counsel for Appellant :- Rakesh Bahadur

Counsel for Respondent :- Ghan Shyam Joshi, K.K. Arora, Kshitij Shailendra, Pankaj Rai, Pawan Kumar Shukla, R. Tewari, S.K. Yadav

Hon'ble Saral Srivastava, J.

1. Heard Shri Rakesh Bahadur, learned counsel for the appellant and Shri Pawan Kumar Shukla, learned counsel for the respondents.

2. The appellant by means of the present appeal has assailed the award dated 10.09.2002 passed by Motor Accident Claims Tribunal/Additional District Judge (Court No. 10), Moradabad in MACP No.27 of 1998 whereby the Tribunal has awarded an amount of Rs. 38,19,000/- along with 9% as compensation to the claimant-respondent.

3. The claim petition has been instituted by the respondent Nos. 1 and 2 for the death of one Dr. Sangita Gupta who died in an accident on 04.08.1997 between the two vehicles, namely, vehicle registration No. M.P. 9D/2303 and Maruti car No. DL4-C/3885. The learned counsel for the appellant has assailed the award on the ground of compensation. It is contended that as per the income tax return of the deceased, the income of the deceased was shown as Rs. 92,467/- and which would be the income for computing the compensation. It is contended that the tribunal has erred in law in adding Rs. 1,50,000/-, an amount of depreciation shown in the balance-sheet of the year F.Y. 1996-97 in the income of deceased. It is contended that Rs. 1,50,000/-, the amount of depreciation cannot form the part of income of the deceased and as such, the

Tribunal committed manifest error of law in adding Rs. 1,50,000/- for computing the compensation.

4. It is further contended that the Tribunal has framed the issues to be adjudicated in the claim petition on 07.12.1999. However, the claim petition was dismissed in default on 27.08.2000 and the same was restored on 21.08.2001. Thereafter, the claimant-respondent's evidence was closed on 04.03.2002 and the Tribunal on 22.04.2002 granted time to the claimant-respondent to file income tax return of the deceased. It is submitted that since the delay in disposal of the claim petition occurred due to the fault of the claimant-respondent, therefore, the appellant's company is not liable to pay interest for a period from 27.08.2000 to 22.04.2002.

5. Shri Pawan Kumar Shukla submitted that as per the balance-sheet of the deceased for the F.Y. 1996-97 Paper No. 38 Ga/8 that depreciation of Rs. 1,50,000/- has been claimed which also form part of the income of the deceased and, therefore, the Tribunal has rightly added the amount of Rs. 1,50,000/- with the income of the deceased for the purpose of computing the compensation.

6. Be that as it may, the Court has perused the paper book of the appeal and finds that the income for the F.Y. 1995-96 (assessment year 1996-97) of the deceased was shown from salary as Rs. 28,322/-, and from business and profession Rs. 48,762/-; in the statement of computation of total income for the assessment year 1996-97, the total income of the deceased was shown as Rs. 70,340/-, accordingly, the return for the assessment year for the year 1996-97 was filed showing the income of the deceased to be Rs. 70,340/-, on 23.12.1997. The deceased had died in an accident on 04.08.1997, the return for the assessment year for 1996-97 was filed after the death of the deceased. The claimant-respondent also

filed the return of the deceased for the assessment year 1997-98 (F.Y. 1996-97) a paper No. 38 Ga/2 on 23.12.1997 showing the income of the deceased to be Rs. 92,462/- from the profession and business. In the balance-sheet for the year ending on 31.03.1997 under the heading "income and expenditure account", depreciation of Rs. 1,50,000/- has been shown. The income tax return has been filed showing the income of the deceased to be Rs. 92,467/- on which an income tax of Rs. 14,806/- was paid. The tribunal has not given any reason as to how the depreciation forms the part of the income of the deceased. It is settled in law that for computing the compensation, the income of the deceased shall be taken to be the loss of the income of the family and the compensation shall be computed on the basis of the said income.

7. This Court finds that the Tribunal without giving any reason and basis for including the depreciation of Rs. 1,50,000/- added the same in the income of the deceased for the purpose of computing the compensation. This Court is of the view that an amount of Rs. 1,50,000/- as depreciation cannot be taken to be part of the income of the deceased and the Tribunal should take only Rs. 92,467/- as income of the deceased for the purpose of computing the compensation. From the said income, the income tax of Rs. 14,806/- paid by the deceased is liable to be deducted, and the remaining income i.e. Rs. 78,456/- shall be taken as loss of dependency and from the said amount of Rs. 78,456/- $\frac{1}{3}$ rd i.e. Rs. 26,152/- is liable to be deducted towards personal expenses of the deceased. Thus the dependency of the family on the income of the deceased comes to Rs. 52,304/- per annum on which the multiplier of 17 is to be applied since the age of the deceased was 30 years.

8. The claimant has filed cross Objection No. 14523 of 2023. In

view of the judgment of the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680** is entitled to 40% future prospect and, accordingly, this Court awards 40% future prospect.

9. The Tribunal is directed to compute the compensation in the light of the observation given above. So far as the amount of Rs. 2,500/- awarded towards funeral expenses and Rs. 5,000/- towards consortium and Rs. 20,000/- towards medical expenses, this Court finds that the said amount has rightly been awarded by the Tribunal and the said amount be added in amount of recalculated compensation.

10. In so far as the contention of the learned counsel for the appellant with respect to the liability of the company on interest for the period from 27.08.2000 to 22.04.2002 is concerned, this Court is not inclined to entertain the said argument considering the fact that these are the procedural delays in disposing the claim petition, the Court should not be rigid and should adopt a liberal approach keeping in view the fact that paramount object of the Court is to do justice to the claimant by granting him adequate compensation.

11. For the reasons hereinabove, the appeal of the insurance company and the cross objection of the claimant-respondent is **partly allowed** and the Tribunal is directed to re-calculate the compensation in the light of the observation given above. On the amount of compensation, the claimant-respondent shall be entitled to interest as awarded by the Tribunal from the date of institution of the claim petition till the date of the payment of the award.

Order Date :- 12.10.2023/A. Prajapati