

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 25 of 2002

Appellant :- Smt. Manorma Devi And Others

Respondent :- Jagadish Bahadur And Others

Counsel for Appellant :- Sharve Singh, Sharve Singh

Counsel for Respondent :- Awadhesh Kumar

Saxena, Abhinav Shukla, Chandra Prakash

Srivastava, Mithilesh Kumar Gupta, Priyanshu Kumar

Srivastav

Hon'ble Saral Srivastava, J.

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

2. The present appeal has been preferred by the claimants/appellants for enhancement of compensation against the judgement dated 04.12.2001 and decree dated 15.12.2001 passed by the Motor Accident Claims Tribunal/ Additional District Judge, Court No.13, District Allahabad in M.A.C.P. No. 3 of 1996 (Smt. Manorma Devi & Others Vs. Jagadish Bahadur And Others).

3. Challenging the award, learned counsel for the appellants has contended that the appellant-claimant has proved by leading cogent evidence on record that the accident was the result of sole negligence of driver of truck. It is submitted that tribunal without there being any evidence on record in respect to the negligence of the deceased, who was driving the tractor held 50% negligence in the accident. It is submitted that reason given by the tribunal in holding the negligence of the deceased that no driving licence of the deceased was

produced on the record and since the deceased did not possess the driving licence, therefore, the deceased was also negligent in the accident is not sustainable in law. Accordingly, it is submitted that finding of the tribunal on the issue of negligence is illegal and is liable to be set aside.

4. It is further submitted that no amount towards future prospect has been awarded by the Tribunal, whereas considering the age of the deceased i.e. 30 years, the 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 contended that there were five 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 1/4 towards personal expenses of the deceased instead of 1/3. Lastly, it is contended that the Tribunal has erred in law in applying the multiplier of 16, whereas the Tribunal ought to have applied the multiplier of 17 considering the age of parents 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**.

5. Per contra, learned counsel for the respondents contended that the tribunal in holding the negligence of the deceased in the accident had given cogent reason, inasmuch as, if the deceased was holding a valid driving licence then the

presumption would have been raised that he knew the driving of the tractor. It is further contended that the manner in which the accident took place clearly reflects that the deceased was also negligent in the accident, and had the deceased being a trained driver, the accident would not have occurred. Thus, it is contended that the finding of the tribunal on the issue of negligence of the deceased in the accident is not liable to be set aside. It is further submitted that the compensation awarded by the Tribunal is just and proper, hence, the same does not call for interference by this Court in the appeal.

6. I have considered the rival submissions of the parties and perused the record.

7. Be that as it may, the appellants-claimants in order to prove the negligence of the driver of the truck in the accident produced PW-2 who categorically stated that the accident was the result of the sole negligence of driver of the truck. Tribunal has also recorded the finding that the driver of the truck did not put on the blinkers of the truck while turning the truck due to which, the driver of the other vehicle could not approach that the truck was to turn and that resulted in accident. Tribunal on the sole ground that the driving licence of the driver of tractor was not filed on the record presumed the negligence of the deceased in the accident. The finding of the tribunal in respect of the negligence of the deceased in the accident is perverse and against the record inasmuch as the PW-2 had proved that the accident was result of sole negligence of the driver of truck.

8. In such view of the fact, the finding of the tribunal on the compensation of contributory negligence is set aside and it is held that the accident was a result of sole negligence of driver of truck.

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 40 % towards future prospect considering the age of the deceased.

10. The submission of learned counsel for the claimants/appellants with regard to deduction of 1/4 towards personal expenses of the deceased instead of 1/3 has got substance, and thus, following the judgement of the Apex Court in the case of Sarla Verma (supra), 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.

11. The submission of learned counsel for the claimants/appellants in respect to multiplier of 17 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 17 instead of 16.

12. 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.

13. For the reasons given above, the appeal 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 :- 9.11.2023

A.N. Mishra