

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 85 of 2002

Appellant :- Oriental Insurance Co. Ltd. Kanpur Nagar

Respondent :- Sri Sheetla Prasad Sharma And Others

Counsel for Appellant :- Anubhav Sinha

Counsel for Respondent :- Deepak Kumar

Jaiswal,A.B.Maurya,M.N.Siddiqui

With

Case :- FIRST APPEAL FROM ORDER No. - 235 of 2002

Appellant :- Sheetla Prasad Sharma And Another

Respondent :- Oriental Insurance Company Ltd. And Another

Counsel for Appellant :- Deepak K. Jaiswal,Mohd. Naushad
Siddiqui

Counsel for Respondent :- Anubhav Sinha

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant-Insurance Company and learned counsel for the claimants-respondents.
2. Since both the appeal arise out of the common judgement, therefore, both the appeal are being decided by this common judgement.
3. The FAFO No.85 of 2002 has been filed by the appellant-Insurance Company & FAFO No.235 of 2002 has been filed by the claimants for enhancement against the award dated 07.11.2001 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.8, Kanpur Nagar in M.A.C.P. No.497 of 1999.
4. Challenging the said award, learned counsel for the appellant-Insurance Company has contended that it was a case of accident between two vehicles, namely, maruti car No.U.P. 78L-1353 and contessa car No.DL1CF-7298. It is submitted that it was a case of head on collision between the two vehicles, and the manner in which the accident had taken place demonstrates that there was

negligence of driver of maruti car in the accident in which the deceased was travelling, therefore, the Tribunal should have reduced the compensation to the extent of negligence of driver of maruti car.

5. It is further contended that as per the case of the claimants/respondents, the deceased was employed with a Chartered Accountant and he was receiving salary of Rs.3,000/- per month, but there was no proof of income of the deceased, and therefore, considering the fact that the accident has taken place in the year 1998, the assessment of income of the deceased to be Rs.3,000/- per month is on higher side. Lastly, it is submitted that the Tribunal should have deducted 1/2th towards personal expenses of the deceased instead of 1/3 as the deceased was bachelor.

6. Per contra, learned counsel for the claimants/respondents would contend that the deceased was travelling in maruti car and therefore, it was a case of composite negligence. Accordingly, it is submitted that it is the choice of the claimants /respondents to claim compensation from either of the tortfeasors in view of the judgement of the Apex Court in the case of **Khenyei Vs. New India Assurance Company Ltd. & Others, (2015) 9 SCC 273.** It is contended that the Tribunal has rightly assessed the income of the deceased to be Rs.3,000/- per month.

7. It is further contended that no amount towards future prospect has been awarded by the Tribunal, whereas considering the age of the deceased i.e. 22 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 the Tribunal has erred in law in applying the multiplier of 12, whereas the Tribunal ought to have applied the multiplier of 18

considering the age of deceased 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**. Lastly, it is submitted that no amount has been awarded towards non-pecuniary damages, whereas the claimants/appellants are entitled to Rs.15,000/- towards the aforesaid head.

8. Be that as it may, admittedly, the deceased was travelling in maruti car. It is established on record that it was a case of composite negligence and, therefore, it is the choice of the claimants/respondents to recover the amount from either of the tortfeasors as has been held by the Apex Court in the case of Khenyei (supra).

9. So far as the quantification of compensation is concerned, though the learned counsel for the claimants/ respondents has stated that the deceased was employed with Rahul Saxena, Chartered Accountant and was receiving Rs.3,000/- per month as salary, but the claimants/respondents did not lead any evidence on record to prove that the deceased was employed with Rahul Saxena, Chartered Accountant, therefore, considering the fact that the accident had taken place in the year 1998, this Court is of the view that the assessment of income of the deceased to be Rs.3000/- per months is on higher side. Accordingly, this Court holds that the compensation should be computed by taking the income of the deceased to be Rs.2,500/- i.e.30,000/- per annum.

10. This Court finds substance in the submission of the learned counsel for the appellant Insurance Company that in the instant case, the Tribunal should have deducted 1/2 towards personal expenses of the deceased instead 1/3 as the deceased was bachelor. Accordingly, this Court directs that the compensation shall be

computed by deducting 1/2 towards personal expenses of the deceased in place of 1/3.

11. 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.

12. The submission of learned counsel for the claimants/respondents in respect to multiplier of 18 has got substance, and thus, following the judgement of the Apex Court in the case of **Sarla Verma (supra)**, this Court holds that compensation should be calculated by applying the multiplier of 18 instead of 12.

13. The submission of learned counsel for the claimants/appellants in respect to non-pecuniary damages has also got substance, therefore, this Court holds that the claimants/respondents are entitled Rs.15,000/- towards non-pecuniary damages.

14. The enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the payment of award.

15. For the reasons given above, both the appeals are *partly allowed* and award of the Tribunal is modified to the extent indicated above. There shall be no order as to cost.

Order Date :- 16.10.2023/NS