

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2115 of 2003

Appellant :- National Insurance Co Ltd.

Respondent :- Ram Phool Singh And Others

Counsel for Appellant :- Satish Chaturvedi, Komal Mehrotra

Counsel for Respondent :- ,Aakansha Singh

Chandraul, Arun Kumar Shukla, P.S. Chauhan, Sudhir Kumar
(Chandraul)

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant against the award dated 21.05.2003 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.11, Muzaffar Nagar in M.A.C. No.96 of 2001.
3. Challenging the said award, learned counsel for the appellant has contended that the appellant was insurer of Tata 709 No.U.P.10C/8283 and the other truck bearing registration No.U.H.N.3264 was insured with the New India Insurance Company. It is submitted that the testimony of PW2 proved that the accident was result of sole negligence of driver of the truck No.U.H.N.3264, and as such, the Tribunal has erred in law in holding 50% negligence of the driver of the truck insured with the appellant Insurance Company. It is submitted that the compensation awarded by the Tribunal is excessive inasmuch as it is stated that the deceased was engaged in the business of pesticides but the claimants did not produce any licence of the deceased permitting him to run the business of pesticides, and therefore, the Tribunal has erred in law in

holding that the deceased was engaged in the business of pesticides and held the income of the deceased to be Rs.5,000/- per month. It is further submitted that the deceased was a bachelor, therefore, the Tribunal should have deducted 1/2 towards personal expenses of the deceased instead of 1/3. Accordingly, it is submitted that the compensation awarded by the Tribunal should be reduced.

4. Per contra, learned counsel for the respondents would contend that admittedly, it was case of head on collision between the two vehicles, and the Tribunal after appreciating the evidence on record held 50% negligence of drivers of both the vehicles. It is submitted that the finding of the Tribunal on the issue of negligence is a finding of fact and does not warrant interference by this Court in appellate jurisdiction.

5. Be that as it may, the Tribunal after appreciating the documentary evidence as well as testimony of witnesses produced by the claimants/respondents, held negligence of both the drivers equal in the accident. The finding of the Tribunal on the point of contributory negligence of the driver of truck insured with the Insurance Company is based upon the proper appreciation of facts and evidence on record.

6. Learned counsel for the appellant Insurance Company despite his best efforts could not demonstrate that the finding of the Tribunal on the issue of contributory negligence is perverse and against the record. In such view of the fact, the submission of learned counsel for the appellant in respect to

contributory negligence of the driver of the truck insured with the appellant Insurance Company is not sustainable in law and is rejected.

7. So far as the quantification of compensation is concerned, if the deceased was running a business without having a proper licence for the same, the deceased was liable for penal consequence, but in the instant case, the claimants/respondents produced receipts of pesticides purchased by the deceased and also proved that the deceased was running a business of pesticides. Accordingly, this Court finds that the Tribunal has not committed any error in holding the income of the deceased to be Rs.5,000/- per month.

8. Even otherwise, if the contention of the learned counsel for the appellant Insurance Company is accepted that the income of the deceased was assessed by the Tribunal on higher side, the fact remains that the Court is under obligation to award just and appropriate compensation.

9. In the instant case, the Tribunal has not awarded any amount towards future prospect and has also applied wrong multiplier, inasmuch as considering the age of the deceased, the Tribunal should have applied multiplier of 18 in place of 17. Thus, for the reasons given above, this Court is not inclined to interfere with the quantification.

10. For the reasons given above, the appeal lacks merit and is accordingly **dismissed** with no order as to costs.

Order Date :- 30.10.2023/NS