

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1012 of 2006

Appellant :- Sri Shiv Kumar Agnihotri

Respondent :- The National Insurance Company Ltd. And
Another

Counsel for Appellant :- Mohd.Naushad Siddiqui

Counsel for Respondent :- Manish Kumar Nigam

Hon'ble Saral Srivastava,J.

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

2. The present appeal has been filed by the claimants/appellants for enhancement of compensation.

3. Challenging the award, learned counsel for the appellants has contended that the Tribunal has erred in law in holding 40% negligence of the rider of the scooter without there being any evidence on record in respect to the negligence of the rider of the scooter. It is contended that PW-2 who was eyewitness of the accident appeared before the Tribunal and proved that the accident was the result of rash and negligent driving of driver of truck and in the absence of any evidence in rebuttal to the testimony of PW-2, the Tribunal has erred in law in holding 40% negligence of the rider of the scooter. Accordingly, it is submitted that the Tribunal has erred in law in reducing the compensation to the extent of 40%.

4. Learned counsel for the claimants/appellants has urged that the accident had taken place in the year 2002, therefore, considering the nature of work of the deceased, the Tribunal should have taken the income of the deceased to be Rs.2,000/- per month i.e.

Rs.24,000/- per annum for computing the compensation. It is further submitted that the claimants/appellants are also entitled to 40% towards future prospect considering the age of the deceased in view of the judgment of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680**. Lastly, it is submitted that the claimants/appellants are entitled to at least Rs.10,000/- towards loss of state.

5. Per contra, learned counsel for the respondents would contend that admittedly four persons were travelling on the scooter whereas the scooter was meant only for two persons, therefore, the Tribunal has rightly held the negligence of the rider of scooter to the extent of 40%. Accordingly, it is submitted that the finding of the Tribunal on the issue of negligence of rider of scooter was just and based upon proper appreciation of evidence on record. It is further contended that the compensation has rightly been awarded by the Tribunal.

6. Be that as it may, PW-2 who was the eyewitness of the accident proved that the accident was the result of rash and negligent driving of driver of truck. The other documentary evidence on record also corroborated the testimony of PW-2 in respect to the negligence of driver of truck in the accident. The Tribunal on presumption that since four persons were riding on the scooter, therefore, the rider of the scooter was also negligent in the accident, held 40% negligence of the rider of scooter in the accident. This Court is of the view that in the absence of any evidence on record proving the negligence of the rider of scooter in the accident, the Tribunal has erred in law in holding 40% negligence of rider of scooter in the accident inasmuch as the

claimants/appellants proved by producing PW-2 that the accident was the result of casual driving of driver of truck.

7. In such view of the fact, the finding of the Tribunal holding 40% negligence of ride of scooter in the accident is perverse and not sustainable in law and is accordingly set aside. Consequently, it is held that the accident was the result of sole negligence of driver of truck in the accident.

8. The submission of learned counsel for the claimants/appellants in respect of assessment of income of the deceased has substance and accordingly, it is provided that Tribunal should assess compensation by taking the income of the deceased to be Rs.24,000/- per annum instead of Rs.10,000/- per annum for the purpose of computation of compensation.

9. The submission of learned counsel for the claimants/appellants in respect of future prospect has got force in view of the judgment of Apex Court in the case of **Pranay Sethi (supra)** and thus, following the aforesaid judgment of Apex Court and considering the age of the deceased, claimants/appellants are entitled to 40% towards future prospect.

10. The submission of learned counsel for the claimants/appellants in respect of loss of state has got force and thus, it is provided that the claimants/appellants are entitled to Rs.10,000/- towards loss of state.

11. 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.

12. Thus, for the reasons given above, the appeal is partly **allowed**

and the award of the Tribunal is modified to the extent 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 a certified copy of this order. There shall be no order as to costs.

Order Date :- 30.10.2023

R.S. Tiwari