

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2280 of 2004

Appellant :- Vijay Kumar And Others

Respondent :- Oriental Insurance Co. Ltd. Thru Divl. Manager
And Anr.

Counsel for Appellant :- Mohd. Naushad Siddiqui,

Counsel for Respondent :- Shreesh Srivastava, Vipul Kumar

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 award.
3. Challenging the award, learned counsel for the appellants/claimants has contended that the Tribunal has erred in law in holding 50% negligence of the deceased in accident. It is submitted that the claimants/appellants produced PW-2 Sri Narayan as eyewitness of the accident who deposed before the Tribunal that the accident was the result of rash and negligent driving of truck No.UP30/4409. It is submitted that no evidence in rebuttal to the testimony of PW-2 was filed by the insurance company, and therefore, the finding of the Tribunal holding 50% negligence of the deceased in the accident is perverse and against the record.
4. It is further contended that the accident had taken place in the year 2001, and therefore, the tribunal has erred in law in assessing the compensation holding the income to be Rs.15,000/- per annum. It is submitted that at the relevant time, income of a person

engaged in labour work was not less than Rs.21,000/- per annum, and accordingly, it is submitted that the award of compensation is on lower side, and therefore, tribunal should have computed the compensation by taking the income of the deceased to be Rs.21,000/- per annum. It is further submitted that considering the age of the deceased, the claimants/appellants are also 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.***

5. Per contra, learned counsel for the respondent would contend that the Tribunal after appreciating the facts and evidence on record could elaborate the reasons to conclude that there was 50% negligence of the deceased in the accident. It is contended that since the finding of the Tribunal on the issue of negligence is based upon proper appreciation of facts and evidence on record, and therefore, does not call for any interference by this Court.

6. Be that as it may, the case of the claimants is that the deceased was standing on footpath when she was hit by offending vehicle, however, the Tribunal concluded that the accident took place while the deceased was crossing road and while crossing road, she should have been careful. The claimants/appellants proved that the accident was the result of sole negligence of driver of truck by producing PW-2. The insurance company did not lead any evidence to rebut the testimony of PW-2. Even if it is admitted that the deceased while crossing road met with the accident, the driver of the offending vehicle should have been driving the vehicle cautiously, and if he was driving vehicle cautiously, the accident would not have occurred. In such view of the fact, this Court is of the view that the finding of the Tribunal holding the 50%

negligence of the deceased is perverse and against the record and is not sustainable in law and is accordingly set aside. Consequently, it is held that the accident was the result of the sole and negligence of driver of offending truck No.UP30/4409.

7. The accident is stated to have taken place in the year 2001. It is a common knowledge that in the year 2001, even the income of a person engaged in labour work was Rs.21,000/- per annum. Considering the said fact, this Court holds that the compensation should be computed by taking the income of the deceased to be Rs.21,000/- per annum in place of Rs.15,000/-.

8. The submission of learned counsel for the claimants/appellants in respect of future prospect has also 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, claimants/appellants are entitled to 40% towards future prospect considering the age of the deceased.

9. 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.

10. For the reasons given above, the appeal is partly ***allowed*** and award of the Tribunal is modified to the extent as indicated above. Insurance company is directed to pay the enhanced amount of compensation to the appellant/claimant within a period of three months. There shall be no order as to cost.

Order Date :- 27.10.2023

R.S. Tiwari