

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 477 of 2017

Appellant :- Shri Guddu And Anr.

Respondent :- State Of U.P. Thru. Secy. Sookhana And Jan Sampark Vibhag Andanr

Counsel for Appellant :- Balendu Shekhar, Lakhan Kumar Kalani

Hon'ble Jaspreet Singh, J.

Heard Shri Raj Kumar Vishwakarma, learned counsel appearing under the authority of Shri Balendu Shekhar for the appellants and Shri Arun Kumar, learned standing counsel for the State-respondents.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 passed in Claim Petition No.616/2015 wherein in a death case the Tribunal has awarded a sum of Rs.1,52,000/- along with 7% interest in favour of the claimants-appellants.

The claimants-appellants, who are the parents of the deceased Mansi filed a claim petition bearing No.616/2015 under Section 163-A of the Motor Vehicles Act, 1988 with the averments that on 15.07.2015 at around 03:00 PM, the girl child Mansi was hit by a Jeep bearing UP-32-BG-3839, as a result, Mansi was severely injured and during her treatment within three hours, she expired.

The claim petition came to be contested by the respondents and it was denied that the accident occurred with the vehicle belonging to the respondents.

However, upon exchange of pleadings, the Tribunal framed four issues and after leading oral and documentary evidence, it concluded that the accident was caused by rash and negligent driving of the Jeep bearing No.UP-32-BG-3839. The driver of the offending vehicle namely Mithilesh Rai was also charge-sheeted. It was also found that the driver of the offending vehicle had a valid and subsisting licence and as the vehicle belonged to the State of U.P., it was exempted from the Insurance.

The Tribunal thereafter considered the matter and applying the Schedule as appended to Section 163-A of the Motor Vehicles Act, 1988, awarded a sum of Rs.1,52,000/- in favour of the claimants-appellants and against the State-respondents. It is this award dated 24.03.2017 which has been challenged by the claimants-appellants in the instant appeal.

The submission of the learned counsel for the appellant is that the Tribunal has not awarded the amount appropriately and since the deceased was a child, it has not taken note of the fact that the deceased also used to help her mother and no adequate amount has been paid towards conventional head and as such the award deserves to be enhanced.

Learned standing counsel while refuting the aforesaid submissions states that the Tribunal has properly noticed the notional income as provided in the Second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988 and thereafter has computed the compensation which in the given background does not suffer from any error and the appeal deserves to be dismissed.

Having heard learned counsel for the parties and from the perusal of the material on record, this Court finds that insofar as the findings returned by the Tribunal relating to factum of accident, involvement of vehicle, rash and negligent driving of its driver, they are not challenged either by filing a cross appeal or cross objection in terms of Order 41 Rule 22 CPC. Thus, the same are affirmed.

Now, the only issue which is left for consideration is as to whether the Tribunal has given an appropriate amount or not. In this regard, it will also be relevant to notice that Second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988 has been repealed and now one consolidated sum is payable in cases relating to death as per the amended provisions which has come into effect in the year 2018.

This Court is reminded of its decision in **Poonam Gupta v. Arun Kumar Mishra, 2019 SCC Online All 6786**, whereby this Court had the occasion to consider the impact of the amended provisions which came into effect in the year 2018 especially noticing that the accident occurred prior to that date and what would be the effect if the amendment which was introduced in the year 2018 can be made applicable in cases of appeal.

This Court after considering the decisions of the Apex Court and another decision of the Division Bench of Calcutta High Court has held as under:-

"18. In view of the above, it would be noted that in terms of the aforesaid amendment introduced in the Second Schedule which replaces the entire structured formula which was prevalent in the earlier Second Schedule appended to Section 163-A. From the aforesaid, it would also reveal that the concept of non-pecuniary damages has been taken away and a complete lump sum amount in case of fatal accident causing death for

which a lump sum of Rs. 5,00,000/- has been provided. Earlier, the compensation was being calculated on the structured formula thereafter the interest and the amount towards the non-pecuniary damages was granted by the Court and with fixing the non-pecuniary damages by the Apex Court in the case of Pranay Sethi (Supra) the claimants were entitled to be same, however, as the appellant has relied upon the amendment incorporated in the year 2018 in the Motor Vehicles Act, 1988 and has urged that the same is applicable in the present circumstances, Thus, this Court has no hesitation to hold that as far as the applicability of the Second Schedule is concerned, the same shall apply, however, the submission of learned counsel for the appellant to the extent that upon the aforesaid sum of Rs. 5,00,000/-, the appellants/claimants should also be granted non-pecuniary damages as fixed by the Apex Court in the case of Pranay Sethi (supra) does not find favour with this Court.

19. The entire premise upon which the new Schedule has been amended gives no reason to doubt that as far as death cases are concerned one lump sum amount is to be granted upon which the claimants may be entitled to the interest, however, apart from the lump sum, there is no scope to grant any further amount towards the non-pecuniary damages as it would be seen that earlier in the second schedule an amount was mentioned towards grant of non-pecuniary damages even though meager which in certain decisions of the Apex Court was termed as redentant and now with the new substitution of the IIInd Schedule as per the amendment of 2018, there is no provision for grant of any sum towards non-pecuniary damages. The legislature has introduced the amendment after the decision of the Apex Court in the case of Pranay Sethi (Supra) and if wanted to provide for non-pecuniary damages it could have provided so in the schedule, however, it has not been done and it appears to be purposefully to provide one composite amount as lump sum in case of fatal accidents and injury cases covered under Section 163-A of the Motor Vehicles Act, 1988 and to make the grant of amount of compensation relevant in today's scenario."

In view of the aforesaid, this Court is of the clear opinion that the appellants are entitled to the benefit and this Court provides that the appellant shall be entitled to a total sum of Rs.5,00,000/- along with interest @ 7% per annum from the date of application till the date of its actual payment and any amount already paid by the respondents shall be adjusted from the same and the balance if any shall be payable to the claimants-appellants.

In view of the aforesaid, the award dated 24.03.2017 passed in Claim Petition No.616/2015 shall stand modified to the aforesaid extend.

In view of the aforesaid, the appeal is partly allowed.

In the facts and circumstances, there shall be no order as to costs. Record of the Tribunal concerned be returned forthwith.

Order Date :- 18.11.2023

Rakesh/-