

Court No. - 6

Case :- FIRST APPEAL FROM ORDER No. - 632 of 2011

Appellant :- Umesh Chandra Saxena And Anr.

Respondent :- Sanjeev Yadav And Ors.

Counsel for Appellant :- Ashok Sinha

Counsel for Respondent :- Ajeet Srivastav, Pramod Shanker Shukla

Hon'ble Jaspreet Singh, J.

1. Heard Shri Ashok Sinha, learned counsel for the appellants and Shri Ajeet Srivastava, learned counsel appearing for the respondent no.3/Insurance Company.

2. None has put in appearance on behalf of the respondents no. 1 and 2. Though they have been adequately served as noticed by the office report dated 20th September, 2023.

3. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 30.03.2011 passed by the Special Judge(Ayodhya Prakaran) / Motor Accident Claims Tribunal, Lucknow in Claim Petition No.9 of 2008 whereby in a death case, the Tribunal has awarded a sum of Rs.1,44,500/- as compensation along with interest which has been directed in terms of the award.

4. The appellants, who are the claimants seek enhancement of the awarded sum primarily on the ground that their only son

was 18 years of age and had met his maker, untimely, and the Tribunal has merely awarded a sum of Rs.1,44,500/- that too is on the basis of pure surmises and as such cannot sustain judicial scrutiny. It is further urged that since the deceased was 18 years of age and was studying in Class-XI and had plans for acquiring the degree of B.Com. and become a Chartered Accountant accordingly the future prospects have not been taken note of. The Tribunal also granted a meager amount towards conventional head and committed an error in taking the notional Income of Rs.15,000/- per annum and thereafter deducted 2/3rd therefrom which is also erroneous which has resulted in sheer miscarriage of justice, hence, the appeal.

5. Per contra, the counsel for the Insurance Company while defending the award submits that the accident in question took place in year 2006 and considering the facts and circumstances where the deceased was merely a student accordingly a notional income was adopted by the Tribunal and one time compensation of Rs.1,20,000/- was determined and a sum of Rs.4500/- was added towards future prospects and funeral expenses and loss of estate and another Rs.20,000/- was added towards loss of filial consortium accordingly the amount as arrived at by the Tribunal does suffer from any error, hence, the award does not require any interference.

6. The Court has heard the learned counsel for the parties and

also perused the materials on record.

7. In order to test the veracity of the submissions of the learned counsel for the parties, it will be first relevant to take a glance at the facts giving rise to the instant appeal.

8. The claimants, who are the appellants before this Court instituted Claim Petition No.9 of 2008, under Section 166 of the Motor Vehicles Act seeking compensation on account of death of their only son Manas Saxena. It was stated that on 19.08.2006 at around 07:15 A.M. Manas Saxena had left his home and was travelling on Vikram Tempo bearing No. U.P. 32 BN 5782 to go to his school i.e. Lucknow Public College, Block - B, Rajajipuram. While the said tempo was on Tulsidas Marg, the driver of the tempo was driving the vehicle rashly and negligently because of which the said tempo turned turtle and Manas Saxena sustained grievous injuries. While he was taken to the hospital, during his treatment he succumbed to his injuries on the same day.

9. It is in the aforesaid context that the claimants, being the parents of deceased Manas Saxena filed the claim petition. The petition came to be contested by the owner, Shri Sanjiv Yadav, who filed his written statement stating that the tempo was duly insured and its driver Vipin Agarwal was a proficient driver having a valid and subsisting driving license. The vehicle also possessed all relevant documents and even though the

negligence was denied of the tempo driver, however, it was stated that the amount as claimed by the appellants was excessive. The insurance company also filed its separate written statement and took the general defence that unless it is established that the offending vehicle had complete documents and was driven in accordance with the policy condition, the insurance company cannot be compelled to indemnify the award.

10. Upon the exchange of pleadings, the Tribunal framed five issues and after the parties had led evidence both oral and documentary, the Tribunal concluded that Manas Saxena lost his life on account of rash and negligent driving of the tempo driver. It was also held that the offending tempo did not have the requisite permit and that its driver also did not possess a valid driving license and the tempo was also not insured. Thereafter, the Tribunal went on to compute the compensation and noticing the age of the deceased as 18 years and that he was studying in Lucknow Public College in Class-XI and had completed his Class-X successfully in 1st Division and that in future he had aspiration of completing his B.Com. and take up the professional course of Chartered Accountancy and hence the Tribunal took the notional income of Rs.15,000/- per annum, deducted 2/3rd and applying a multiplier of sixteen, arrived at a figure of Rs.80,000/- to which future prospects were added

amounting to Rs.40,000/-. A sum of Rs.20,000/- was added towards loss of filial consortium and Rs.4500/- was added towards funeral expenses and loss of estate and a total sum of Rs.1,44,500/- was awarded by means of award dated 30.03.2011, which is under challenge.

11. In the aforesaid backdrop, if the material on record is seen, it would be found that the Tribunal has taken a notional income of Rs.15,000/- per annum which is apparently not appropriate. It is to be seen that the deceased child was about 18 years of age and had completed his High School in 1st Division. He had future ahead of him and once positive evidence was led that the deceased child had plans of completing his B.Com. and thereafter pursue the course of Chartered Accountancy, apparently the child had employment potentiality. This aspect has not been considered by the Tribunal. The Tribunal ought to have noticed the aforesaid fact and taken the notional income at Rs.36,000/- per annum. The Tribunal ought to have added and factored for a future prospects and being a bachelor a deduction of 50% should have been made and not of 2/3rd. Even the amount granted under the conventional heads is on much lower side, accordingly, this Court is of the clear view that the manner in which the Tribunal has calculated the compensation is not just and appropriate. Hence, the Court redetermines the compensation as under:

Income - Rs.36000/- per annum

Add: Future Prospects @ 40% = Rs.14,400/- per annum.

Net Income = Rs.50,400/- per annum.

Deduction 50% =Rs.25,200/- per annum.

Age - 18 years

Multiplier 18

Thus compensation payable Rs.25,200/- x 18 = Rs.4,53,600/-

Add:-

Funeral Expenses = Rs.15,000/-

Loss of Estate = Rs.15,000/-

Filial Consortium = Rs.40,000/-

Thus, total Compensation Payable = Rs.5,23,600/-.

12. This Court finds that the claimants is entitled to a total sum of Rs.5,23,600/- along with 7% interest from the date of the application till the date of its actual payment. Any amount paid to the appellants shall be deducted from the aforesaid sum and the remaining sum shall be paid within 60 days by the Insurance Company to the claimants and they shall be titled to recover the same from the owner /driver of the offending vehicle in accordance with the law laid down by the Apex Court in the case of **Oriental Insurance Company Limited Vs. Nanjappan and others; (2004) 13 SCC 224.**

13. It is also to relevant to notice that despite the Tribunal holding that the vehicle was not being driven in accordance with the policy condition, the vehicle did not have a permit nor its driver had valid license but the Tribunal fastened the liabilities on the owner/driver with a direction to the Insurance Company to pay the awarded sum and recover it from the owner/driver. There is no cross appeal by any of the respondents nor any cross-objections have been filed and as such the said findings are affirmed.

14. In light of the aforesaid, the award dated 30.03.2023 passed in Claim Petition No.9 of 2008 is modified to the extent that the appellant shall be entitled to a total sum of Rs.5,23,600/- along with 7% interest per annum from the date of application till the date of its payment and any amount paid to the claimants shall be deducted from the amount determined by this Court and the payment shall be made by the Insurance Company within 60 days and the Insurance Company shall have a right to recover the same from the owner/driver in accordance with law.

15. With the aforesaid the appeal is **partly allowed**. In the facts and circumstance, there shall be no order as to costs.

16. The record of the Tribunal shall be turned forthwith.

Order Date :- 30.11.2023

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