

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 255 of 1997

Appellant :- Smt. Gayatri Trivedi

Respondent :- The Oriental Insurance Company Ltd. And
Others

Counsel for Appellant :- P.K.Trivedi

Counsel for Respondent :- Anil Srivastava

With

Case :- FIRST APPEAL FROM ORDER No. - 223 of 1997

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Smt. Gyatri Trivvedi And Others

Counsel for Appellant :- Anil Srivastava

Hon'ble Jaspreet Singh,J.

1. Heard Shri Piyush Pathak, learned counsel appearing under the authority of Shri P.K. Trivedi, learned counsel for the appellant and Shri Anil Srivastava, learned counsel appearing for the insurance company.

2. This is a batch of two appeals filed under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 4.8.1997 passed in C.P. No. 81 of 1992 whereby in a death case, the Tribunal has awarded a sum of Rs. 1,83,420/- along with 10% interest.

3. One appeal bearing FAFO No. 223 of 1997 has been filed by the Insurance company whereas the other connected appeal bearing FAFO No. 255 of 1997 has been filed by the claimants seeking enhancement of the award. Since both the appeals arise

out of the same award, hence they have been connected, heard and are being decided by this Court.

4. First, the Court proposes to take the appeal of the Insurance company and Shri Anil Srivastava, learned counsel appearing for the insurance company has submitted that the Tribunal has erred in passing the award against the insurance company while failing to consider that the accident itself was not established. It is submitted that the alleged date of accident is dated 17.4.1992 and information was given to the police by the family member of the deceased on 18.4.1992, wherein it was stated that the two deceased were driving their Hero Honda motorcycle bearing No. UP32B-5786 and they on their own had hit the stationary Matador van bearing No. UPJ-5440 (which was insured with the appellant's Insurance Company). It is further urged that this fact was also corroborated inasmuch as the owner of the motorcycle had also filed a claim for the damage to the motorcycle before the National Insurance Company Limited wherein he had clearly indicated that the motorcycle had hit the stationary Matador van. It is thus sought to be urged that once the motorcyclists were negligent and they hit the stationary Matador vehicle, consequently, they could not have been granted any compensation for their own negligence. Thus, it is urged that once the claim petition was filed, the claimants took a diagrammatically opposite stand and took the plea that the accident was caused on account of negligence of the Matador vehicle inasmuch as the two deceased were on their motorcycle and the Matador van was reversing negligently and crushed the motorcyclists who died on the spot.

5. It is further submitted that one Shri Sunil Kumar was examined as the eye-witness and relying upon the testimony of the said witness that the award has been passed. It is thus contended that the claimants had taken two contrary stands and

improved their case while there was no mention of the said eye-witness above and for the aforesaid reasons, the claim petition ought to have been dismissed or if at all, the burden would be on the claimants themselves and there was no negligence of the Matador van, hence no liability could be fastened on the insurance company.

6. Shri Piyush Pathak, learned counsel appearing under the authority of Shri P.K. Trivedi (who is reported to be ill) has submitted that the alleged documents which have been referred to by the counsel for the insurance company was never placed on record before the Tribunal. Moreover, none of the said documents were proved and the testimony of Sunil Kumar, the eyewitness remained uncontroverted. It has further been urged that the brother of the deceased, who had lodged the FIR, clearly stated that he was not present at the site and he had merely informed the police regarding the occurrence of the accident and that cannot be taken to be gospel truth. The FIR is mainly an information to the police, which sets criminal justice system into motion. The same cannot be treated as encyclopedia. Accordingly, merely on this ground, the claim petition could not be dismissed. Moreover, there is no denial of the fact that Shri Sunil Kumar who was the eye-witness had clearly deposed before the Tribunal and his testimony withstood the cross examination and no adverse comment could be elicited from his testimony. Thus, the contention of the learned counsel for the appellant deserves to be rejected.

7. The Court has heard the learned counsel for the parties on the aforesaid issues and also perused the material on record.

8. Shri Anil Srivastava, learned counsel appearing for the Insurance Company could not dispute the fact that the documents which were sought to be referred and have been

placed along with the affidavit filed in support of an application for stay in the instant appeal were not proved during the trial by the insurance company. The record shows that the insurance company had filed a separate written statement and apparently general defences were raised. It was not pleaded by the insurance company that the accident did not occur on account of the negligence of the Matador vehicle.

9. The record would further reveal that Smt. Gayatri, the widow of the deceased was apparently not an eye-witness and she was merely a formal witness. Thus, nothing much can turn on her testimony on the issue of negligence. Shri Sunil Kumar was examined as P.W.-2 who has clearly narrated the manner in which the accident occurred. He clearly explained that the Matador van had hit the motorcycles and even after the incident, he was there at the site for about an hour or so. Though, the cross examination of the eye-witness was done by the insurance company, but nothing worthwhile could be elicited from his testimony which could be treated to be adverse. It is in this view of the matter that the Tribunal has rightly considered the issue of negligence and decided in favour of the claimants against the Matador.

10. At this stage, it will also be relevant to notice that the owner of the Matador van did not contest the proceedings even before the Tribunal and despite service did not appear. The insurance company also did not lead any evidence to prove the documents which they have filed before the Tribunal. Moreover, there were also photocopies and thus, this Court does not find that the Tribunal committed any error in discarding the said documents especially as noticed above there were photocopies and not proved by examining any witness.

11. For the aforesaid reasons, this Court is absolutely clear in its

mind that the Tribunal has not committed any error in passing the award dated 04.08.1997, consequently, the appeal bearing FAFO No. 223 of 1997 shall stand **dismissed**.

12. Now coming to FAFO No. 255 of 1997 which has been filed by the claimants for enhancement, Shri Piyush Pathak, learned counsel appearing under the authority of Sri P.K. Trivedi for the appellants has urged that the deceased was working with the Northern Railways in capacity of a fitter and was drawing a salary of Rs. 1,619/-. It was also brought on record that his salary was enhanced by Rs. 1200/- in three years and he was the only son of his parents. He had minor sisters and at the time of the accident, his wife was pregnant with his child.

13. It is urged that the Tribunal has not made a correct assessment while determining the compensation and has adopted multiplier which is not in consonance with the chart as stated by the Apex Court in the case of *Sarla Verma vs. DTC, (2009) 6 SCC 121* which has been approved by the Apex Court in the constitution bench decision of *National Insurance Company Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680*. It has further been submitted that no amount has been granted towards consortium and as such, the awarded sum is on the much lower side which requires enhancement.

14. Shri Anil Srivastava, learned counsel appearing for the insurance company on the other hand submits that though the determination of compensation is the fundamental duty of the Tribunal to see that a just and fair compensation is awarded, but at the same time, it cannot be fanciful nor it can be a bounty for the claimants. It has been urged that the accident occurred in the year 1992 and moreover, the amount which was awarded in the year 1997 already carries an interest @ 10% per annum which is also on the much higher side especially noticing that the

appeals of the year 1997 is being adjudicated in the year 2023 and about 26 years have lapsed. It is thus submitted that the Court may look at both sides while considering the contentions of the respective parties and especially when the awarded sum carries an interest @ 10%. This in itself is going to be a respectable sum which may not require any interference. Consequently, the appeal for enhancement deserves to be dismissed.

15. Having heard the learned counsel for the parties on the aforesaid issue of enhancement, this Court finds that the appeal has been engaging the attention of this Court since 1997. The appeal for enhancement was reported to be barred by limitation of six days. Considering the aforesaid this Court could not find that an order condoning the delay in filing the appeal for enhancement was passed.

16. Be that as it may, since only a very short delay of six days is involved and both the appeals are pending before this Court since 1997, accordingly, this Court does not find that it would be appropriate to consider the effect of delay as an impediment and accordingly, the delay shall stand condoned.

17. The Court has considered the rival submissions and also noticing that the aforesaid grounds raised by the appellant's counsel seeking enhancement has been crystalized by the Apex Court in the decision in ***Sarla Verma (supra)*** and ***Pranay Sethi (supra)*** which were decisions rendered by the Apex Court in the year 2008 and 2017 respectively and also noticing the fact that the deceased was a permanent government employee working in the Northern Railway as a fitter and that he was merely 26 years of age and had a complete future ahead of him. Thus, this Court finds that the manner in which the Tribunal has passed the award and determined the compensation requires

reconsideration.

18. The income admittedly of the deceased was Rs. 1619/- per month which was subject to enhancement. Taking a lenient view also noticing the age of the deceased, he would still be entitled to future prospects at 40%. He had a family. Accordingly, 1/3rd would be deducted for his personal expenses and the multiplier as provided in *Sarla Verma (supra)* would be attracted. Since the appellant was survived by his wife, minor sisters and parents, thus the sum amount also ought to be granted towards filial consortium and spouse consortium. The claimants would also be entitled to loss of estate and funeral expenses and taking a holistic view of the matter, this Court redetermines the compensation as under:

Income = Rs. 1,619/- p.m.

Add:- towards future prospects @ 40%:- = Rs. 647/-

Total Income = Rs. 2,266/- p.m.

Income after deduction of 1/3 = Rs. 2266-755 =1,511/- p.m.

Thus total income = Rs. 1,511/- p.m.

Age = 26

Multiplier = 17

Thus compensation payable = Rs. 1511 X 12 X 17 = 3,08,244/-

Add:- Filial consortium and spouse consortium = 80,000/-

Loss of estate and funeral expenses = Rs. 30,000/-

Thus, total compensation

payment shall be = 3,08,244+1,10,000 = Rs. 4,18,244/-

19. Noticing that the appeal of 1997 is being decided and once the award has been enhanced, accordingly, the interest rate also needs to be rationalized.

20. Thus, this Court provides that the claimants shall be entitled to a total sum of Rs. 4,18,244/- which shall carry interest @ 7.5% per annum from the date of application till date of its actual payment.

21. Any amount payable to the claimants up till now shall be deducted from the aforesaid sum as determined by this Court and the remaining shall be paid to the claimants by the insurance company within a period of 60 days from the date, a certified copy of this order is placed before the insurance company.

22. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimants.

23. In view of the aforesaid, the appeal bearing No. 255 of 1997 is **partly allowed** and the award passed by the M.A.C.T., Raebareli in C.P. No. 81 of 1992 dated 4.8.1997 shall stand modified to the above extent.

24. Conclusion:-

The appeal bearing FAFO No. 255 of 1997 stands **partly allowed**.

The appeal bearing FAFO No. 223 of 1997 stands **dismissed**.

25. In the facts and circumstances, there shall be no order as to costs. The record of the Tribunal be returned forthwith

Order Date :- 31.10.2023

Shravan