

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 391 of 2000

Appellant :- Smt. Lalli Devi

Respondent :- Javendra Nath Gupta And Others

Counsel for Appellant :- M.Saeed

Counsel for Respondent :- Mrs. Pooja Arora

Hon'ble Jaspreet Singh,J.

1. Heard Shri M. Saeed, learned counsel for the appellant and Ms. Pooja Arora, learned counsel for the respondent-insurance company.

2. The instant appeal has been preferred by the claimant seeking enhancement of the award dated 26.05.2000 passed in C.P. No.100 of 1996, whereby in a death case, the Tribunal has awarded a sum of Rs.60,487.67/- as compensation.

3. Shri M. Saeed, learned counsel for the claimant-appellant while seeking enhancement submitted that on 30.05.1995 at around 3:00 pm, Deepu while returning home on his bicycle reached the *Bazar*. At that time, the offending truck bearing No.UP 78/B-2645, which was being driven rashly and negligently, hit the bicycle, which was damaged and Deepu sustained grievous injuries and died on the spot. The claim petition was filed by the parents and even an FIR was lodged. It was stated that Deepu was 12 years of age and on account of his death, the parents sustained traumatic shock and for the aforesaid reasons had filed the claim petition bearing No.100 of 1996.

4. The claim petition came to be contested by the owner as well as the Insurance Company. However, after the exchange of the pleadings, the claim petition proceeded ex-parte against the owner and driver and it was only contested by the Insurance Company. While dealing with the issue of negligence, it was found that the accident was caused by the negligence of truck bearing No. UP 78/B-2645. The Tribunal also found that the registration, license of the truck driver as well as its fitness certificate were in order including the insurance policy. Consequently, the liability to indemnify the award, was fastened on the Insurance Company. The Tribunal also noticed that since Deepu was 12 years of age and was learning stitching and was also working at a local tailor's shop was able to earn. Noticing the aforesaid facts, the Tribunal awarded a sum of Rs.60,487.67/- by means of the order dated 26.05.2000, which

is sought to be enhanced by the claimant.

5. The submission of learned counsel for the appellant is primarily two folds. It is submitted that Tribunal has not noticed the notional income appropriately nor applied the proper multiplier. The Tribunal should have noticed the future of the deceased child and consequently also filial consortium should have been granted, which has not been done and as such the award is on much lower side.

6. Learned counsel for the Insurance Company submits that the accident relates to the year 1995 and the Tribunal has taken a holistic view and has awarded a compensation, which is quite adequate. In the aforesaid circumstances, entire amount has been already paid to the appellant even prior to the filing of the appeal. Consequently, the award does not require any interference and the appeal is liable to be dismissed.

7. Having heard learned counsel for the parties, this Court finds that the appeal is for enhancement and neither the owner of the offending vehicle nor the insurance company has filed any cross-appeal, as a result, the factum of the accident, the factum of involvement of the offending vehicle and it being duly insured and its driver having a valid and subsisting license, all such findings including the vehicle being insured are not in dispute and are, accordingly, affirmed.

8. Now the only issue that needs consideration as to whether the award has been adequate where it relates to the death of a young child. Apparently, from the record, it is stated that Deepu was 12 years of age. It was also positively asserted that he was learning stitching and was also working in a tailor's shop. In such cases, where the income of the deceased cannot be ascertained with certainty, the courts must notice the background of the family of the deceased and then arrive at a finding on notional income. Since the deceased was 12 years of age and though he was learning how to stitch and tailor the garments and was also earning some amount by working at a tailor's shop, this Court is clearly of the view that the manner, in which the Tribunal has calculated the compensation is not adequate.

9. In the light of the decisions of the Apex Court in the case of **Kajal Vs. Jagdish Chandra; 2020 (4) SCC 413** and **Kurba Bibi and others Vs. Oriental Insurance Company Limited; 2023 Live Law (SC) 697** and applying the ratio to the instant case, this Court finds that the claimant do require an adequate, just and fair compensation, which is being re-determined by this Court as under:-

Income [Notional] = 3,000/- p.m.

Add:- For future prospects :- 40% (1200+3000)= 4,200/- p.m.

Net Income after deduction (1/2) = 2,100/- p.m.

Age = 12

Multiplier = 18

Thus compensation payable:- [2100x18x12] = 4,53,600/-

Add:- Loss of Estate & Funeral Expenses = 30,000/-

Add:- Filial Consortium = 40,000/-

Thus Total = Rs.5,23,600/-

10. In view of the aforesaid, this Court is of the clear view that the claimant is entitled to a sum of Rs.5,23,600/-. Since, the initial amount has awarded by the Tribunal, i.e., Rs.60,487.67/- has already been paid and as such remaining sum of Rs.4,62,512/- round off shall be paid by the insurance company to the claimant along with 7% interest per annum from the date of filing of the appeal till the date of its actual payment. The same shall be done within a period of 60 days from today.

11. In view of the aforesaid modification, the award dated 26.05.2000 passed in C.P. No.100 of 1996 shall stand modified to the aforesaid extent.

12. The appeal is **allowed** in the aforesaid terms. In the facts and circumstances, the costs are made easy.

13. The record of the Tribunal shall be returned forthwith.

Order Date :- 23.11.2023

Ashutosh Pandey