

Neutral Citation No. - 2023:AHC-LKO:81338**Court No. - 19**

Case :- FIRST APPEAL FROM ORDER No. - 491 of 2010

Appellant :- New India Assurance Company Limited Thru Dy. Manager Legal C

Respondent :- Shanti Devi W/O Late Mansha Ram

Counsel for Appellant :- Jitendra Narain Mishra

Counsel for Respondent :- Arun Saxena, Lalji Prasad Shukla, U.P.S. Kushwaha, Vaibhav Raj

ALONG WITH

Case :- FIRST APPEAL FROM ORDER No. - 492 of 2010

Appellant :- New India Assurance Company Limited Thru Dy. Manager Legal C

Respondent :- Chhotey Lal Gupta S/O Sri Narayan Lal

Counsel for Appellant :- Jitendra Narain Mishra

Counsel for Respondent :- Lalji Prasad Shukla, O.P. Singh, Suresh Panjwani

ALONG WITH

Case :- FIRST APPEAL FROM ORDER No. - 493 of 2010

Appellant :- New India Assurance Company Limited Thru Dy. Manager Legal C

Respondent :- Deepak S/O Ram Sharan

Counsel for Appellant :- Jitendra Narain Mishra

Counsel for Respondent :- Lalji Prasad Shukla, Suresh Panjwani

ALONG WITH

Case :- FIRST APPEAL FROM ORDER No. - 496 of 2010

Appellant :- New India Assurance Company Limited Thru Deputy Manager

Respondent :- Prem Chandra Saxena S/O Late Bhagwan Swaroop Saxena

Counsel for Appellant :- Jitendra Narain Mishra

Counsel for Respondent :- L.P. Shukla II, Suresh Panjwani

ALONG WITH

Case :- FIRST APPEAL FROM ORDER No. - 1111 of 2010

Appellant :- Shanti Devi W/O Late Mansha Ram And Anr.

Respondent :- New India Insurance Company Limited Thru Deputy Manager And Or

Counsel for Appellant :- Arun Saxena, Anand Mohan

Counsel for Respondent :- Lalji Prasad Shukla, T.J.S. Makker, Upendra Singh, Vaibhav Raj

Hon'ble Jaspreet Singh, J.

1. This is a batch of five appeals preferred under Section 173 of the Motor Vehicles Act, 1988. Out of which, four appeals have been filed by the New India Assurance Company Limited whereas one appeal has been filed by the claimant seeking enhancement of the award.

2. In order to appreciate the controversy involved, certain facts giving rise to the instant appeals are being noticed hereinafter.

3. On 28.02.2007, Mansha Ram, Sandeep Saxena and Happy alias

Sanjay were all were travelling in a Jeep bearing No.UGC-0828 which was being driven by Happy alias Sanjay. As the jeep was moving towards Ramkot, it met with an accident with a Mini Bus bearing No.UP-30-A-6042 and as a result of this collision Mansha Ram and Sandeep Saxena expired whereas Chote Lal Gupta and Deepak Verma sustained injuries. The persons, who died were occupants of the jeep whereas the injured persons were occupants of the mini bus. The jeep was insured with the Oriental Insurance Company Limited whereas the Mini Bus was insured with the New India Assurance Company Limited.

4. In the case of Sandeep Saxena, the claimants preferred Claim Petition No.159/2007 which came to be allowed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.6, Sitapur by means of its award dated 11.11.2009 wherein a sum of Rs.2,05,000/- was awarded in favour of the claimants along with 6% interest per annum whereas in the case of Mansha Ram, Claim Petition No.25/2008 was filed which came to be decided on 12.11.2009 wherein only a sum of Rs.87,000/- along with 6% interest per annum was awarded in favour of the claimants. This has given rise to two appeals bearing FAFO No.496/2010 and FAFO No.491/2010 respectively.

5. It will further relevant to mention here that insofar as the legal heirs of Mansha Ram, they were dissatisfied with the award, accordingly, initially they preferred cross-objections before this Court which was registered as Cross-Objection No.12/2010, however, later the same came to be rejected on 03.08.2010 seeking liberty of the Court to file a cross appeal. A Coordinate Bench of this Court permitted the legal heirs of Mansha Ram

to withdraw the cross-objection and granted liberty to file an appeal which has been filed and registered as FAFO No.1111/2010.

6. Insofar as the two cases of injury relating to Chote Lal Gupta and Deepak Verma is concerned, the case of Chote Lal Gupta was registered as Claim Petition No.271/2007 wherein a sum of Rs.40,000/- was awarded by means of the award dated 09.12.2009 by the MACT, Court No.6, Sitapur and in the case of Deepak Verma his Claim Petition No.305/2007 wherein the award was passed on 11.11.2009 by MACT/Court No.6, Sitapur and a sum of Rs.61,000/- along with 6% interest per annum was awarded in favour of the claimant Deepak Verma. These two awards have been challenged by the appellant Insurance Company in FAFO No.492/2010 and FAFO No.493/2010 respectively.

7. From the above, it would reveal that the Insurance Company who was the insurer of the Mini Bus No.UP-30-A-6042 assailed the awards relating to death case in FAFO No.492/2010 and FAFO No.493/2010 as well as one appeal as already noticed for enhancement by the claimants, who are heirs of Mansha Ram, who died in the accident bearing FAFO No.1111/2010.

8. Since, the question of law and facts are both similar in all the aforesaid appeals, consequently, all the five appeals have been clubbed together and have been heard and are being decided by this Court by common judgment.

9. The facts as are relevant for the adjudication of the appeals are that Mansha Ram alongwith Sandeep Saxena and Happy alias Sanjay were

travelling in a Jeep No.UGC-0828. The said Jeep was being driven by Happy alias Sanjay while the said Jeep belonged to Umadutt Verma while Chote Lal Gupta and Deepak Verma were travelling in Mini Bus No.UP-30-A-6042.

10. It is the case that when two vehicles were near Village Dharampur, the Mini Bus No.UP-30-A-6042 was being driven rashly and negligently and it hit the Jeep No.UGC-0828, as a result, Happy alias Sanjay, Mansha Ram and Sandeep Saxena expired whereas in the same accident Deepak Verma and Chote Lal Gupta suffered injuries, who were occupants of the bus. The claimants specifically stated that the accident occurred solely on account of rash and negligent driving of the bus driver whereas there was no fault of the jeep driver.

11. The matter was contested and though it was stated that since the jeep was being driven against the policy conditions, hence, the insurer of the jeep namely Oriental Insurance Company Limited was not liable to indemnify the award and it was the insurer of the bus who was required to service the awards.

12. The Tribunal had framed issues based upon the pleadings exchanged and thereafter the evidence was led and the Tribunal came to the conclusion that the accident was on account of rash and negligent driving of the bus driver. In view thereof, the Tribunal had directed the Insurance Company of the Mini Bus namely New India Assurance Company Limited to indemnify the awards. It is in the aforesaid backdrop that the said awards have been challenged in the manner noticed hereinabove in the appeals which are before this Court.

13. Shri Jitendra Narain Mishra, learned counsel for the appellant attacked the awards stating that it was a clear case of contributory negligence whereas the jeep and the bus had a head on collision. It is also urged that from the site plan, it would indicate that it was actually the jeep driver who had come on the wrong side of the road as shall be evident from the perusal of the site plan and in such a case, the Tribunal has ignored to fasten any liability on the jeep owner/driver.

14. It is further urged that a perusal of the evidence led by the PW-2 who was supposedly an eye witness. In his statement, he had stated that the accident occurred on account of negligence of both the vehicles and this statement has not been noticed by the Tribunal to fasten the liability on the Jeep owner/driver.

15. It is also urged that there are discrepancies in the statements of the PW-1 and PW-2 and the conflicting statements apparently gives rise to the issue of contributory negligence which had to be considered but has not been noticed and the Tribunal erred in fixing the liability entirely on the appellant - New India Assurance Company Limited which is against the material on record and as such the awards needs to be modified by factoring the liability on the jeep owner.

16. It is urged that since the Jeep was being driven against the policy conditions, accordingly the liability was not on the Oriental Insurance Company Limited rather it is on the Jeep owner.

17. Shri Arun Saxena, learned counsel for the claimants-respondents has urged that the submissions of the learned counsel for the appellant

Insurance Company is not quite correct for the reason that all the persons who had suffered injuries or expired in the accident for them it was a case of composite negligence and they have a right to recover the amount from either of the two i.e. the Jeep owner or the Mini Bus owner and their respective insurer.

18. It has further been urged by Shri Saxena that what has not been informed by the learned counsel for the appellant is the fact that in the same accident another occupant namely Happy alias Sanjay also expired and his legal heirs had also filed a Claim Petition No.204/2017 which also came to be decided by the MACT/Additional District Judge, Court No.9, Sitapur by means of its award dated 16.09.2008 wherein a sum of Rs.1,91,200/- was awarded in favour of the claimants against the bus owner and its insurer.

19. It is urged that a certified copy of the said judgment was placed on record of the Tribunal which was bearing paper No.Ga-65. In the said decision, it was squarely held that it was the bus which was responsible for the accident and there was no negligence of the jeep driver.

20. It is further stated that even though the New India Assurance Company Limited was a party to the said claim petition but it did not assail the findings or the award dated 16.09.2008 passed in case of Smt. Sudha Devi v. Shyam Mohan Bajpai. At this stage, the appellant Insurance Company is not entitled to assail the findings of negligence and say that it is a case of contributory negligence. The findings of the case of Smt. Sudha Devi has attained finality and it cannot be prudently observe that in one case the findings is that it is the sole negligence of bus driver while in

others it can be contended that it is the negligence of both the offending vehicles and that too in very same accident and this would give rise to contradictory findings and for the aforesaid reasons the arguments of the learned counsel for the appellant regarding contributory negligence is apparently fallacious.

21. It is further urged that insofar as the quantum is concerned, the insurance company has not assailed the same either in death cases or in the injury cases. However, it is only the heirs of Mansha Ram who have assailed the award by filing FAFO No.1111/2010 wherein the award dated 12.11.2009 passed in Claim Petition No.25/2008 is under challenge only seeking enhancement. While urging on the issue of enhancement, it has been stated that the Tribunal has erred in taking the notional income of the deceased Mansha Ram at Rs.15,000/- per annum whereas it was specifically stated that he was doing business of selling drinks and was able to earn Rs.6,000/- per month.

22. It has further been submitted that as per his age 55 years, no future prospects have been added and even the amount paid towards conventional heads are very low and the amount of Rs.87,000/- granted is not just and fair, accordingly, the award requires enhancement.

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

24. At the outset, it may be noticed that there are two issues which are involved in the instant appeals **(i)** whether it could be treated as the case of contributory negligence as urged by the learned counsel for the appellant

and (ii) whether the award dated 12.11.2009 passed in Claim Petition No.25/2008 requires any enhancement.

25. Noticing the arguments of the learned counsel for the appellant regarding the issue of negligence, it would be seen that PW-2, who is alleged to be an eye witness has stated in his cross-examination that both the drivers of the vehicles were negligent while the accident occurred. The emphasis made that once the eye witness had stated that it was the duty of the Tribunal to have considered this aspect of the matter which has not been done. However, from a perusal of the statement of PW-2 namely Sabir Ali, it would indicate that he did not see the actual occurrence of the accident. He stated that it was the bus driver who was driving the bus rashly and negligently and hit the jeep from the front. He further stated that he had reached the site as soon as the accident had taken place. Much reliance has been placed on the cross-examination of this witness by the learned counsel for the respondent-defendant No.4 to lay stress on the statement given by the said witness that both the vehicles were at fault. However, learned counsel for the appellant could not dispute the fact that no evidence was led by the New India Assurance Company Limited so much so that even the bus driver and the bus owner also did not led any evidence. In absence of any evidence on behalf of the bus driver and the bus owner, it was not open for the insurer of the bus to raise this plea.

26. From the composite reading of the statement given by the witnesses the inescapable conclusion is that it was the bus in question which was negligent especially when the best person to deny this fact would have been the bus driver but he was not examined. On the other hand, another

important fact which needs to be seen is that in the same very accident Happy alias Sanjay, who was the driver of the jeep in question also expired and his legal heirs had filed Claim Petition No.204/2007. In the said case, it was clearly recorded by the Tribunal vide its award dated 16.08.2008 that it was the sole negligence of the bus driver and even though the New India Assurance Company Limited was a party, it did not file any appeal against the said award, hence, the findings of negligence having attained finality. Once in respect of the same accident, a finding has been returned by the Tribunal after due contest and leading evidence that the negligence was of the bus driver. Now in the other cases without leading evidence and also without producing the bus driver as a witness, the findings cannot be assailed as they have attained finality and for the said reasons the submissions of the learned counsel for the appellant Insurance Company regarding contributory negligence is turned down.

27. This Court further finds that the basic premise of the argument regarding the contributory negligence is the site plan which was placed on record bearing paper No.Ga-68. It is now well settled that a finding of contributory negligence cannot be solely returned on the basis of the site plan as noticed by the Apex Court in **Jiju Kuruvila and others vs. Kunjamma Mohan & Ors., (2013) 9 SCC 166** and as noticed above that merely on the basis of site plan without leading any evidence, the insurer cannot successfully contest the plea and thus for all the aforesaid reasons the plea of contributory negligence is turned down.

28. The appellant Insurance Company has not assailed any other finding nor the quantum, hence, the appeals filed by the appellant Insurance

Company bearing **FAFO No.491 of 2010; FAFO No.492 of 2010; FAFO No.493 of 2010 and FAFO No.496 of 2010 are dismissed.**

29. Now the only issue left to be considered as where the award passed in the case of Smt. Shanti Devi in Claim Petition No.25/2008 is just and proper.

30. In this context, if the findings returned by the Tribunal are noticed, it would be seen that the claimants had stated that the deceased Mansha Ram was able to earn Rs.6,000/- from his business by selling grains, the Tribunal has adopted the notional income of Rs.15,000/- per annum and treating the age of the deceased as 55 years, it has adopted the multiplier of 8 and after making deduction of 1/3rd has merely granted a sum of Rs.7,000/- towards conventional head as a total sum of Rs.87,000/- has been awarded. However, considering the facts of the case and the fact that the claimants/legal heirs of Mansha Ram could not prove that he was able to ear from his business, a sum of Rs.6,000/- per month and noticing that the accident was of the year 2008, accordingly, this Court finds that the notional income of the deceased ought to have been taken as Rs.30,000/- per annum. The age of the deceased was 55 years, upon which the multiplier of 9 ought to have been adopted as considering the number of dependent 1/3rd is liable to be deducted and 10% should have been added towards future prospect. Since, the deceased was survived by his wife and daughter, accordingly, both are also granted spouse consortium and parental consortium. This aspect has not been appropriately considered by the Tribunal, hence, in light of the principles which have been settled by the Apex Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121; National Insurance Company Ltd. v. Pranay Sethi and others, (2017) 16 SCC**

Page 680 as well as Magma General Insurance Company Ltd., v. Nanu Ram, 2018 SCC OnLine SC 1546, this Court finds that the amount as granted by the Tribunal requires modification and this Court re-determines the compensation as under:-

Income	: Rs.30,000/- per annum
Add: Future prospect @ 10%	: Rs.3,000/- per annum
Total Income	: Rs.33,000/- per annum
Deduction 1/3 (33000-11000)	: Rs.22,000/- per annum
Age	: 55
Multiplier	: 9
Total payable sum	: Rs.22,000x9=Rs.1,98,000/-
Add: (A) Filial consortium and spouse consortium	: Rs.80,000/-
Add: (B) Loss of Estate and Funeral Expenses	: Rs.30,000/-
Thus, total compensation payable shall be	: Rs.1,98,000/- + 1,10,000/- [A+B] Rs.3,08,000/- along with interest @ 6% per annum

31. In view of the aforesaid, the FAFO No.1111/2010 is partly allowed. The award dated 12.11.2009 passed in Claim Petition No.25/2008 shall stand modified to the aforesaid extent holding that the claimants-appellants shall be entitled to a total sum of Rs.3,08,000/- alongwith interest @ 6% per annum as awarded by the Tribunal concerned. Any amount already paid to claimants shall be deducted and the remaining sum shall be paid to the claimants-appellant along with interest as provided in the award dated 12.11.2009.

32. Subject to the aforesaid, the **FAFO No.1111/2010 is partly allowed and FAFO No.491 of 2010; FAFO No.492 of 2010; FAFO No.493 of 2010 and FAFO No.496 of 2010 are dismissed**. In the facts and circumstances, there shall be no order as to cost. The record of the Tribunal concerned shall be returned forthwith.

Order Date :- 11.12.2023
Rakesh/-