

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 6 of 2024

Appellant :- The Oriental Insurance Company Ltd., Lucknow Thru.
Manager

Respondent :- Sarita Devi And Others

Counsel for Appellant :- Satyajit Banerji

Counsel for Respondent :- Manoj Kumar Dubey

Hon'ble Rajnish Kumar,J.

1. Heard Sri Satyajit Banerji, learned counsel for the appellant and Sri M.K. Dubey, learned counsel for the claimant-respondent nos. 1 to 5.

2. This first appeal from order has been filed assailing the judgment and award dated 20.10.2023 passed in Motor Accident Claim Petition No.463 of 2015(Smt. Sarita Devi and others versus Israil Khan and others),by means of which the claim petition has been allowed and a compensation to the tune of Rs.40,55,472/- has been awarded to the claimant-respondent alongwith the interest at the rate of 7% per annum w.e.f. 01.07.2016.

3. The sole argument advanced by learned counsel for the appellant is that the learned Tribunal has wrongly and illegally assessed the income of the deceased on the higher side to the tune of Rs.24733/- per month whereas the same should have been 13517/- per month according to the income tax return of the deceased for the year 2014-15 filed by the claimant respondents. He further submits that there was contradiction in the evidence of the P.W. 3 who was the clerk in the

office of Khand Vikas Adhikari Rudauli, Faizabad, therefore the appellant had preferred an application for summoning the Khand Vikas Adhikari but the same was rejected. He further submits that the salary of the deceased has been assessed on the basis of the last pay drawn for the month of April 2015 and in regard to the aforesaid lesser amount of 13517/-, the explanation of the respondent has been accepted on the basis of information given under the Right to Information Act that the deceased was suspended during the said period, whereas the said information was filed after closure of the evidence, therefore the same could not have been considered by the learned tribunal.

4. On the basis of above, learned counsel for the appellant submits that the damages have been allowed on the higher side, which is not tenable in the eyes of law. Accordingly, appeal is liable to be allowed and the judgment and award dated 20.10.2023 is liable to be set aside.

5. Per contra, learned counsel for the claimant-respondents submits that the deceased remained suspended from August 2014 to January 2015 and was reinstated into service on 17.01.2015, therefore, the income tax return filed for the year 2014-15 is of lesser amount. In this regard, the information received under the Right to Information Act was filed before the Tribunal before closure of the evidence and the same was taken on record by the Tribunal and despite

opportunity given to the appellant also, no evidence contradicting the same was adduced by the appellant. Therefore the appellant are stopped from assailing the said order on this ground. He further submits that the application of the appellant for summoning the Khand Vikas Adhikari was rejected and the same has not been challenged. Even otherwise, the deceased who was working on the post of Gram Vikas Adhikari had died in an accident on 28.05.2015 and the last pay drawn in the month of April 2015 was proved before the Tribunal. Considering the same, the salary of the deceased has rightly been considered and the damages have been assessed by the Tribunal. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

6. Having considered the submissions of learned counsel for the parties, I have perused the records of this appeal and the lower court records.

7. The deceased Hanslal, who was working on the post of Gram Vikas Adhikari, while going from Rudauli Block to his village Dafapur from his Motor Cycle No.U.P. 32 EH 1493 on 28.05.2015 at about 5:00 p.m. in the evening met with an accident as the driver of Vehicle No.U.P. 32 F.N. 0372 coming from the back side, driving rashly and negligently, dashed the vehicle of the deceased, in which he died. In the claim petition filed by the claimant-respondents who are the heirs of the deceased, the accident was proved. In regard to the income

of the deceased the salary certificate for the month of April 2015, just prior to his death, duly signed by the Khand Vikas Adhikari, Rudauli, Faizabad was placed on record as C 34/4. The same has been proved by adducing the evidence of the clerk of the Khand Vikas Adhikari namely Adya Kant Tiwari as P.W.3. Even in the cross examination he proved the said salary certificate and disclosed that after deduction, the deceased was getting Rs.19183/- per month. He also stated that no income tax was payable by the deceased.

8. The claimant-respondents had filed the information received under the Right to Information Act as C 40 in which the information has been given by the Khand Vikas Adhikari to the effect that the deceased Hanslal remained suspended w.e.f. 26.06.2014 to 17.01.2015, when he was finally reinstated. This information was filed alongwith the application C 39 for taking the same on record. The appellant had filed objection to the same as C 42 on the ground that the information has been filed after closure of the evidence, therefore the same cannot be taken on record. The tribunal after considering the application and the objections, rejected the objection and allowed the application by means of the order dated 24.09.2021 and took document C 40 on record. The tribunal held that the evidence was not closed because the same was fixed for defence evidence. This order has not been challenged by the appellant.

9. The application C 34 filed by the appellant for summoning the Khand Vikas Adhikari was also rejected by means of the order dated 16.12.2021 holding that in regard to the contradictions stated by the appellants, all the relevant documents are on record. This order has also not been challenged by the appellant.

10. Perusal of the order sheet of the tribunal also indicates that thereafter the issues no.1,2 and 3 were amended on 09.05.2022 vide order passed on application C 43 and the case was fixed for evidence on 06.08.2022. On 06.08.2022, the parties declined to adduce any additional evidence. Therefore the case was fixed for arguments.

11. In view of the above contention of learned counsel for the appellant that the information sought under the Right to Information Act was filed after closure of the evidence, therefore the same could not have been taken on record and considered, is misconceived and not tenable for two reasons, firstly, as per the order dated 24.09.2021 the evidence was not closed and the case was fixed for defence evidence. Secondly, after taking the aforesaid document on record, the issues were amended and opportunity of additional evidence was afforded to both the parties but no evidence was adduced. Therefore it cannot be said that the appellant was not afforded opportunity to contradict the information received under the Right to Information Act.

12. The learned tribunal considering and accepting the last pay drawn by the deceased in the month of April 2015 to the tune of Rs.24733/-, which was proved, has assessed the damages.

13. In view of above, this Court does not find any illegality or error in the judgment and award passed by the learned Tribunal. The appeal is misconceived and lacks merit.

14. The appeal is, accordingly, **dismissed**. No order as to costs.

15. The statutory deposit made before this Court, by the appellant in the present appeal, shall be remitted to the concerned tribunal, which shall be adjusted towards the damages to be paid to the claimant-respondents under the impugned judgment and award.

16. The lower court record shall be returned to the concerned tribunal forthwith and in any case within two weeks from today.

Order Date :- 5.2.2024

Akanksha