

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 152 of 2018

Appellant :- U.P.Rajya Sadak Parivahan Nigam Lko.Throu Regional Manager

Respondent :- Rama Kant Dwivedi And Another

Counsel for Appellant :- Akhter Abbas,Ambika Prasad

Counsel for Respondent :- Balendu Shekhar,Balendu Shekhar

AND

Case :- FIRST APPEAL FROM ORDER No. - 125 of 2018

Appellant :- Ramakant Dwivedi And Anr.

Respondent :- U.P. State Road Transport Corp. Thru. Managing Director

Counsel for Appellant :- Balendu Shekhar,Jagjeet Singh Sodhi

Counsel for Respondent :- Akhter Abbas,Ambika Prasad

Hon'ble Rajnish Kumar,J.

1. The aforesaid two First Appeals From Order have been filed; one by Uttar Pradesh Rajya Sadak Parivahan Nigam and another by Rama Kant Dwivedi and another i.e. the claimants assailing one and the same judgment and award dated 10.11.2027 passed in MACP No.183 of 2011; Rama Kant Dwivedi and another Versus Uttar Pradesh Rajya Sadak Parivahan Nigam (here-in-after referred as UPSRTC), therefore they are clubbed and decided together.
2. The First Appeal From Order No.152 of 2018 has been filed by the respondent UPSRTC and the First Appeal From Order No.125 of 2018 has been filed by the claimants.
3. Heard, Shri Ambika Prasad, learned counsel for the UPSRTC and Shri Balendu Shekher, learned counsel for the claimants and perused the records.
4. Shri Ambika Prasad, learned counsel for the UPSRTC appellant in First Appeal From Order No.152 of 2018 submits that the Tribunal has failed to deduct the income tax from the salary of the deceased, therefore, impugned judgment and award is not sustainable and the same is liable to be deducted, which is not disputed by learned counsel for the claimant-respondents in the said appeal. However he submits that the income of the deceased has been assessed as Rs.2,40,876/-. The deceased was a woman, therefore, as per applicable income tax

for the concerned assessment year 2011-2012 no income tax was payable up to Rs.1,90,000/- and thereafter 10% income tax is payable on the remaining amount which is not disputed by learned counsel for the UPSRTC, therefore 10% towards the income tax is to be deducted on the amount awarded over and above Rs.1,90,000/- i.e. on Rs.50,876/-.

5. In view of above, the income of the deceased, after deduction of 10% towards income tax i.e. Rs.5088/- of Rs.50,876/-, would come to Rs.2,35,788/-. Accordingly First Appeal From Order No.152 of 2018 is liable to be partly allowed.

6. Learned counsel for the claimants in First Appeal From Order No.125 of 2018 submits that the Tribunal has failed to allow future prospects in terms of judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Versus Pranay Sethi and others; 2017 (4) TAC 673 (SC)** and the appellants are entitled for 30% towards the future prospects as per paragraph 61 of the said judgment as the age of the deceased was between 40 to 50 years. He further submits that the claimants are also entitled for Rs.50,000/- each towards loss of love and affection and Rs.40,000/- each towards loss of filial consortium as per judgment of the Hon'ble Supreme Court, in the case of **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others; 2018 (4) TAC 345 (SC)** as there are two claimants but the Tribunal has allowed only Rs.5,000/- towards loss of love and affection and nothing towards filial consortium.

7. Learned counsel for the UPSRTC could not dispute the above, however he submits that the claimants have not claimed the loss of filial consortium in this appeal.

8. Learned counsel for the claimants submits that in view of the judgment of the Hon'ble Supreme Court, in the case of **Ramla and others Versus National Insurance Company Ltd. and others; 2019 (1) TAC 1 (SC)**, the claimants are entitled for just compensation under Section 168 of the Motor Vehicles Act 1988 and there is no restriction that the Court cannot award compensation exceeding the claimed amount. The relevant paragraph 6 is extracted here-in-below:-

"6. Though the claimants had claimed a total compensation of Rs.

25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court Under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty bound to award just compensation. (See the judgments of this Court in the cases of (a) Nagappa v. Gurudayal Singh MANU/SC/1107/2002 : (2003) 2 SCC 274 (b) Magma General Insurance v. Nanu Ram MANU/SC/1012/2018 (Civil Appeal No. 9581 of 2018, decided on 18.09.2018) (c) Ibrahim v. Raju MANU/SC/1276/2011 : (2011) 10 SCC 634)."

9. He further submits that as per judgment of the Hon'ble Supreme Court, in the case of **Union of India Versus Rina Devi; 2018 (3) TAC 26 (SC)**, the claimants are entitled for just compensation under Section 168 of the Motor Vehicles Act 1988 and the compensation on the date of award is applicable as it has become due only on that date and not earlier as has been held by the Hon'ble Supreme Court in the said judgment in paragraph 15. He further submits that the Hon'ble Supreme Court has also held that the compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time and if the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts, which could not be disputed by learned counsel for the UPSRTC.

10. In view of above and the law laid down by the Hon'ble Supreme Court in the aforesaid judgements, the appellants are entitled not only for the enhancement of the amounts towards loss of love and affection i.e. Rs.50,000/- each but 30% towards future prospects and Rs.40,000/- each towards loss of filial consortium also and the First Appeal From Order No.125 of 2018 is also liable to be partly allowed.

11. In the light of the above discussion, the claimants, who are two in number, are entitled to the following amounts:-

(i) Monthly income Rs.20172.95, out of which the claimants have been held not entitled for Rs.110/- of Canteen allowance, therefore the total monthly Income has been determined Rs.20,073/-. Accordingly yearly income comes to Rs.20,073 x

12 = 2,40,876/-.

(ii) 10% of Rs.50876/- i.e, Rs.5088/- out of the aforesaid yearly income of the deceased is liable to be deducted towards income tax. Therefore the total annual income comes to Rs.2,35,788/-.

(iii) Future prospects i.e. 30% of the income i.e. Rs.70,736/- is to be added in the aforesaid income.

(iv) Deduction towards personal expenses i.e. $\frac{1}{3}^{\text{rd}}$ of Rs.2,35,788/- + Rs.70,736/- = Rs.3,06,524/- - Rs.91,957/- = Rs.2,14,567/-.

(v) After applying multiplier of 13 on Rs.2,14,567/- the total amount of compensation comes to Rs.27,89,371/-

(vi) Loss of love and affection - Rs.1 lakh (Rs.50,000/- each).

(vii) Funeral expenses - Rs.2,000/-.

(viii) Loss of estate - Rs.2500/-.

(ix) Loss of filial consortium - Rs.80,000/- (Rs.40,000/- each).

(x) Total compensation - Rs.27,89,371/- + Rs.1,00,000/- + Rs.2000/- + Rs.2500/- + Rs.80,000/- = Rs.29,73,871/- alongwith interest @ 7% per annum as awarded by the Tribunal.

12. The aforesaid amount shall be paid to the claimants in terms of judgment and award dated 10.11.2017 passed in MACP No.183 of 2011; Rama Kant Dwivedi and another Versus Uttar Pradesh Rajya Sadak Parivahan Nigam by Motor Accident Claims Tribunal/Additional District Judge, Court No.2, Lucknow alongwith interest.

13. With the aforesaid the F.A.F.O. No.152 of 2018; Uttar Pradesh Rajya Sadak Parivahan Nigam, Lucknow Versus Rama Kant Dwivedi and another and F.A.F.O. No.125 of 2018; Rama Kant Dwivedi and another Versus Uttar Pradesh Rajya Sadak Parivahan Nigam, Lucknow are **partly allowed**. No order as to costs.

14. The statutory amount and any other amount deposited before this court under any order of this court shall be remitted to the concerned Tribunal expeditiously and in any case within four weeks from today to be adjusted in the payments to be made to the claimants.

15. The record shall also be sent back to the concerned

Tribunal expeditiously and in any case within a period of four weeks from today.

(Rajnish Kumar,J.)

Order Date :- 23.2.2024

Banswar