

Court No. - 48

Case :- FIRST APPEAL FROM ORDER No. - 2222 of 2010

Appellant :- Smt.Uzma And Others

Respondent :- M/S Govind Das Global Expert Private Ltd. And Another

Counsel for Appellant :- Anju Shukla,Nigamendra Shukla

Counsel for Respondent :- Aarushi Khare

Hon'ble Vipin Chandra Dixit,J.

1. This first appeal from order has been filed by the appellants-claimants under Section 173 of Motor Vehicle Act, 1988 for enhancement of compensation against the judgment and award dated 23.3.2010 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.4, Ghaziabad in M.A.C.P. No.683 of 2008 (Smt. Uzma and two others vs. M/s. Govind Dass Global Expert and another), by which compensation of Rs.3,92,000/- alongwith 6% interest has been awarded to the claimants on account of death of Dr. Mohd. Nasir in the road accident occurred on 22.12.2006.

2. Brief facts of the case are that deceased Dr. Mohd. Nasir alongwith his friends was travelling in Tata Sumo car bearing No.HR-51-M4768. When they reached near village Navla Turn, Police Station Mansoorpur, District Ghaziabad on 22.12.2006 at 8:20 p.m., the Tata Sumo car was collided with truck trolla bearing no. HR-38L2924 which was standing on mid-road without igniting the parking lights. The age of the deceased was 34 years at the time of accident and he was a practicing doctor having income of Rs.1,01,217/- per annum by medical profession. The claimants had claimed Rs.43,20,000/-as compensation.

3. The owner of the truck trolla had put in appearance and filed his written statement denying the claim allegations. The factum of the accident as well as involvement of truck trolla was also denied. The claim petition was also contested by the Insurance Company by filing its written statement. It was a specific case of insurance company that the accident was occurred on account of sole negligence of driver of Tata Sumo car and there was no negligence on the part of driver of insured vehicle.

4. The Claims Tribunal had framed six issues regarding rash and negligence of driver of insured truck trolla, validity of driving licence of drivers of both the vehicles, permit of insured vehicle, negligence of driver of Tata Sumo, non-joining of owner and insurer of the Tata Sumo car as well as quantum of compensation.

5. Smt. Uzma, claimant no.1 had appeared as P.W.-1 and also produced Zamil as P.W.2, who was an eye-witness of the accident. The claimants had also filed

documentary evidence regarding income of the deceased. The owner of the insured vehicle had filed documents regarding driving licence, insurance and permit of the offending vehicle.

6. The Claims Tribunal after considering the entire evidence and materials which are available on record, has decided the issue no.2 and 3 in favour of owner of insured vehicle holding that the driver of the truck trolla was holding a valid and effective driving licence on the date of accident and permit of truck was also valid. The Claims Tribunal while deciding issue no.5 has recorded the finding that the owner and insurer of Tata Sumo car were necessary parties but were not impleaded and as such the claimants are not entitled to recover the amount of compensation from owner and insurer of the Tata Sumo car. The Claims Tribunal while deciding issue Nos. 1 and 4 has recorded the finding that the accident was occurred on account of rash and negligence of drivers of both the vehicles and both the drivers were equally negligent and responsible for the accident. So far as quantum of compensation is concerned, the Claims Tribunal has decided issue no.6 accepting monthly income of deceased as Rs.6000/- and after deducting 1/3rd towards personal expenses and applying multiplier of '16', has awarded the compensation of Rs.3,92,000/- alongwith 6% interest. The Claims Tribunal has deducted 50% compensation on account of contributory negligence of driver of Tata Sumo.

7. Heard Sri Nigmendra Shukla, learned counsel for the appellants and Ms. Aarushi Khare, learned counsel for the Insurance Company-respondent no.2. No one is present for respondent no.1 who is owner of the Truck-Trolla.

8. It is submitted by learned counsel for the appellants that the Claims Tribunal has erred in deducting 50% on account of rash and negligent driving of driver of Tata Sumo car ignoring the fact that admittedly the deceased was travelling in Tata Sumo car and was not driving the car and there was no negligence on the part of deceased. It was a case of composite negligence and it is open to the claimants to claim compensation either from one vehicle or from both the vehicles. It is further submitted that the claimants had fully proved the income of the deceased as Rs.1,01,217/- by producing cogent evidence. The deceased was income tax payee and income tax return for the financial year 2004-05 was filed. The insurance company has not disputed the income tax return filed by the claimants. The Claims Tribunal has erred in accepting the income of the deceased as Rs.6000/- per month. Lastly, it is submitted that nothing has been awarded towards future prospects and only Rs.8000/- has been awarded towards non-pecuniary damages, whereas claimants are entitled for 40% future prospects and Rs.70,000/- for non-pecuniary damages.

9. Ms. Aarushi Khare, learned counsel appearing on behalf of respondent-insurance company has submitted that the Claims Tribunal after considering the evidence of eye-witness and witnesses produced by owner of the insured vehicle has rightly decided issue nos. 1 and 4 that drivers of both the vehicles were

equally responsible for the accident. The finding recorded by the Claims Tribunal in respect of negligence of both the drivers are based on evidence and there is no illegality in any manner. It is further submitted that the claimants had filed income tax return of the financial year 2004-05, whereas the accident took place on 22.12.2006 and no income tax return for the financial year 2005-06 was filed. The Claims Tribunal has rightly considered the income of the deceased as Rs.6000/- and there is no illegality in any manner. Lastly, it is submitted that the Claims Tribunal has rightly assessed the compensation and no ground for enhancement is made out.

10. Considered the submissions of learned counsel for the parties and perused the record.

11. Admittedly, two vehicles were involved in the accident. The Claims Tribunal while deciding issue Nos.1 and 4 has recorded the finding that drivers of both the vehicles namely Truck Trolla and Tata Sumo were equally negligent and responsible for the accident and 50% liability has been fastened upon the respondent-Insurance Company being insurer of truck Trolla and since owner and insurer of Tata Sumo were not impleaded as a party in the claim petition, 50% compensation was reduced. The Claims Tribunal has committed gross illegality in reducing 50% compensation on account of contributory negligence of driver of Tata Sumo. It is admitted fact that the deceased was travelling in Tata Sumo and was not driving the Tata Sumo at the time of accident and as such, there was no contribution on the part of the deceased and it was a case of composite negligence. The Claims Tribunal has erred in reducing 50% compensation on account of contributory negligence of driver of Tata Sumo.

12. The Hon'ble Apex Court in the case of **Khenyei vs. New India Assurance Company Limited and others** reported in **2015(2) T.A.C. 677(S.C.)** has laid down the law that in case of composite negligence, it is open for the claimant to claim compensation either from the owner/driver and insurer of both vehicles or from any one of them.

13. In view of law settled by Hon'ble Apex Court, it is open to the claimants to claim compensation either from owner/insurer of truck trolla or from owner/insurer of Tata Sumo or from both the vehicles. In the present case, since the claim petition was filed claiming compensation from truck trolla, the Claims Tribunal has erred in reducing 50% compensation on account of contributory negligence of driver of Tata Sumo.

14. So far as quantum of compensation is concerned, the claimants had filed income tax return disclosing annual income of Rs. 1,01,217/-. No evidence in rebuttal has been filed by the opposite parties. The Claims Tribunal has erred in disbelieving the income of the deceased. The Claims Tribunal has disbelieved the income of the deceased merely on the ground that income tax return for subsequent financial year 2005-2006 has not been filed by the claimants. The Claims Tribunal

has failed to consider that the accident was occurred on 22.12.2006 and income tax return for the financial year 2004-2005 was filed by the claimants which was prior to the accident. The finding recorded by the Claims Tribunal in respect of income is perverse and income of the deceased is accepted as Rs.1,01,217/- as per income tax return. The Claims Tribunal has also erred in not awarding any amount towards future prospects and only Rs.8000/- was awarded for non-pecuniary damages, whereas the claimants-appellants are entitled for 40% future prospects and Rs.70,000/- for non-pecuniary damages in view of law laid down in the case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **2017(4) T.A.C. 673**.

15. In view of above discussion, the compensation awarded by the Claims Tribunal is reassessed as under:-

1) Annual income = Rs.1,01,217/-

2) Future prospects (40%) = Rs.40,486/-

3) Total annual income = Rs.1,01,217/- + Rs.40,486/- =Rs.1,41,703/-

4) Deduction towards

personal expenses(1/3rd) = Rs.1,41,703/- - Rs.47,234/- =Rs.94,469/-

5) Multiplier applicable (16) =Rs.94,469/- x 16 = Rs.15,11,504/-

6) Non-pecuniary damages =Rs.70,000/-

Total = Rs.15,11,504/- + Rs.70,000/- = Rs.15,81,504/-

16. In view of aforesaid discussion, the appeal filed by claimants is hereby partly allowed and award of the Claims Tribunal is modified and compensation is enhanced from Rs.3,92,000/- to Rs.15,81,504/-. The claimants-appellants are also entitled for 6% interest on enhanced amount from the date of judgement and award of Claims Tribunal dated 23.3.2010.

17. The New India Assurance Company Limited-respondent no.2 is directed to pay enhanced amount alongwith interest to the claimants-appellants within two months from today.

18. No order as to costs.

Order Date :- 23.4.2025

P.P.