

Court No. - 48

Case :- FIRST APPEAL FROM ORDER No. - 3764 of 2010

Appellant :- Smt. Meera Singh And Others

Respondent :- The New India Insurance Co. Ltd. And Another

Hon'ble Vipin Chandra Dixit,J.

1. This first appeal from order has been filed under Section 173 of Motor Vehicles Act, 1988 on behalf of claimants-appellants for enhancement of compensation against the judgment and award dated 21.09.2010 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 15, Kanpur Nagar, in M.A.C.P. No. 499 of 2006 (Smt. Meera Singh and others vs. The New India Assurance Company Ltd. and another) by which compensation of Rs. 1,96,750/- has been awarded to the claimants.

2. Brief facts of the case are that the the claimants being widow and children of late Shiv Pal Singh @ Pappu Singh have filed claim petition under Section 166 of Motor Vehicle Act claiming compensation of Rs. 20,80,000/- on account of death of Shiv Pal Singh @ Pappu Singh who died in a road accident on 07/08.06.2006. It was alleged in the claim petition that in the mid night of 7/8.06.2006 at about 02:00 A.M., the deceased along with his brother Muneshwar Singh was going on motorcycle bearing no. UPW 7417 and when they reached near Chaudgadha, offending truck bearing no. PB 13 H 1615, which was coming from Fatehpur, hit the motorcycle of Shiv Pal Singh @ Pappu Singh, who had received grievous injuries in the accident and died on account of injuries received by him.

3. The opposite party no. 1/The New India Assurance Co. Ltd./insurer of truck has contested the claim petition by filing its written statement. The factum of accident as well as rash and negligent driving of truck driver was denied. It was pleaded that the accident was occurred on account of rash and negligent driving of motorcyclist.

4. The opposite party no. 2 Sri Ram Chaurasia, who is owner of truck did not appear before the claims tribunal and had not contested the claim petition.

5. The claims tribunal had framed four issues for determination namely rash and negligent driving of truck driver, insurance of truck, validity of driving licence of truck driver and quantum of compensation, if any.

6. The claimant no. 1 Smt. Meera Singh widow of the deceased had appeared as PW-1. The claimants had also produced Kuldeep Singh as PW-2 and Ranjeet Singh as PW-3 and had also filed documentary evidence like first information report, charge sheet, postmortem report, permit of truck, insurance cover note and driving licence of Parmatma Prasad.

7. The opposite party no. 1 had filed copy of site plan. No oral evidence had been adduced by the opposite party no. 1.

8. Admittedly, it was a case of head on collision in between motorcycle and truck. The eye witness Kuldeep Singh who appeared as PW-2 has stated on oath that the deceased was driving the motorcycle on his left side and the truck came wrong side which was driven by its driver very rashly and negligently, hit the motorcycle. The accident was occurred on account of rash and negligent driving of truck driver. The claims tribunal after considering the site plan, which was filed and relied by the Insurance Company has recorded the finding that the accident was occurred almost in the middle of road. The claims tribunal had relied the judgment of Hon'ble Apex Court in the Case of **Bijoy Kumar Dugar vs. Bidhya Dhar Dutta** reported in **2006 (1) TAC 969 (SC)** had recorded the finding that both the vehicles were equally negligent and responsible for the accident. The claims tribunal has decided the issue no. 1 regarding negligence holding that both the drivers were responsible to the extent of 50% each for the accident.

9. The insurance of the offending truck was not disputed by the Insurance Company and as such, the issue no. 2 has been decided by the claims tribunal holding that the offending truck was insured with opposite party no. 1 at the time of accident.

10. The Investigating Officer after due investigation has submitted charge sheet against Parmatma Prasad, who was driving the truck at the time of accident. The photocopy of driving licence was filed as paper no. 29Ga, which shows that the driving licence was valid for heavy goods vehicles till 21.06.2008. The Insurance Company had also not disputed the validity of driving licence and the issue no. 3 has been decided by the claims tribunal holding that the driving licence of truck driver was valid and effective on the date of accident.

11. The issue no. 4 was framed for determination of compensation as well as liability to pay compensation. As per claim petition, the monthly income of the deceased was Rs. 6,000/- per month from business. The claimant no. 1 Smt. Meera Singh, widow of the deceased had appeared as PW-1 and has stated on oath that her husband was running a shop of general merchant. The shop was taken on rent in the house of Anil Yadav on payment of rent of Rs. 1,000/- per month. PW-3 Ranjeet Singh who also doing business adjacent to the shop of the deceased has stated that the deceased was running the shop of general merchant and had earned Rs. 6,000/- - Rs. 7,000/- per month. The claims tribunal after considering the evidence adduced by the claimants has recorded the finding that the claimants had not produced any documentary evidence in respect of shop. The tribunal has further recorded the finding that no document in respect of sale and purchase was filed by the claimants and even not adduced any evidence of income and expenses of shop. The claims tribunal had disbelieved the income of the deceased from shop in absence of any authentic evidence. The claims tribunal had accepted Rs. 3,000/- as notional income on relying the judgment of Hon'ble Apex Court in the case of **Laxmi Devi & Others vs Mohammad Tabbar & Another** reported in **2008 (2) T.A.C. 394 (S.C.)**.

12. The age of the deceased was 30 years at the time of accident. The claims tribunal after deducting 1/3rd towards personal expenses of the deceased and by applying multiplier of 16 had calculated the compensation as Rs. 3,93,500/-. Since, the deceased was also found negligent to the extent of 50%, the 50% compensation was reduced and had awarded compensation of Rs. 1,96,750/-. The claims tribunal has not awarded any interest on the awarded amount.

13. The claimants-appellants had challenged the award of claims tribunal dated 21.09.2010 by filing First Appeal From Order No. 3764 of 2010 mainly on the ground that the claims tribunal had erred in deducting 1/3rd amount towards personal expenses of the deceased, whereas there was six dependents and as such, deduction would be 1/4th. It was also argued that nothing has been awarded towards future prospects, whereas, claimants are entitled for 40% future prospects and Rs. 70,000/- towards non pecuniary damages in view of law laid down by Hon'ble Apex Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **2017 (4) T.A.C. 673**.

14. Counsel for respondent/Insurance Company has not disputed that there are six dependents of the deceased and deduction would be 1/4th and claimants are also entitled for 40% future prospects and Rs. 70,000/- for non pecuniary damages.

15. The aforesaid appeal was partly allowed by this Court vide judgment and order dated 04.12.2021 and compensation awarded by the claims tribunal was enhanced from Rs. 1,96,750/- to Rs. 6,74,800/-. The interest @ 6% was also awarded on the enhanced amount from the date of filing of claim petition.

16. This Court while reassessing the amount of compensation has committed inadvertent mistake in not deducting 50% compensation in terms of contributory negligence of the deceased. The claims tribunal after considering the entire evidence and materials which are available on record has recorded the finding that both the vehicles were equally negligent and responsible for the accident and reduced 50% compensation on account of contributory negligence of the deceased. The finding recorded by claims tribunal in respect of contributory negligence has not been challenged by the claimants-appellants and even no ground has been taken in memo of appeal in this regard.

17. It is very surprising that no correction/review application has been filed on behalf of Insurance Company to rectify the mistake committed while reassessing the compensation, as deduction towards contributory negligence was not made.

18. The claimants-appellants had challenged the judgment of this Court dated 04.12.2021 before Hon'ble Apex Court by filing Civil Appeal No. 879 of 2025 (Arising out of SLP (C) No. 1955 of 2025) (Meera Singh & Ors. vs. The New India Assurance Co. Ltd. & Anr.) for further enhancement of compensation on the ground that income of the deceased and multiplier had not been properly considered by the High Court.

19. The Hon'ble Apex Court had set aside the judgment and order of this court dated 04.12.2021 and the appeal was remanded to the High Court to decide the appeal afresh vide judgment dated 21.01.2025.

20. Herd Sri Shirish Srivastava, learned counsel for claimants-appellants, Ms. Archana Singh, learned counsel for respondent Insurance Company and perused the record.

21. It is submitted by learned counsel for the claimants-appellants that the claimants had fully proved the income of the deceased as Rs. 6,000/- per month from running shop of general merchant. The claims tribunal has erred in disbelieving the income of the deceased and has calculated the compensation on the basis of notional income as Rs. 3,000/- per month. It is further submitted that the age of the deceased as per claim petition was 30 years. In the postmortem report, the age was mentioned as 30 years and the claimants in their evidence had also stated the age of the deceased as 30 years. The claims tribunal has committed gross illegality in accepting the age of the deceased in between 30 to 35 years and has applied multiplier of 16. The claims tribunal had not assigned any reason in accepting the age of the deceased in between 30 to 35 years, whereas, as per evidence which are available on record, the age of the deceased was 30 years. The claims tribunal has erred in applying the multiplier of 16, whereas, the multiplier of 17 has been provided by the Hon'ble Apex Court in the case of **Smt. Sarla Verma vs. D.T.C.** reported in **2009 (2) T.A.C. 677 (S.C.)** for the age group of 26 to 30 years.

22. On the other hand, learned counsel appearing on behalf of Insurance Company submits that since there was no documentary evidence produced by the claimants to prove the income of the deceased, the income was rightly accepted as Rs. 3,000/- per month. It is further submitted that the accident was occurred on account of rash and negligent driving of deceased, who was driving the motorcycle and claims tribunal has recorded the finding that both the vehicles were equally negligent and reduced 50% compensation on account of 50% contributory negligence of the deceased.

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

24. It was the case of the claimants before the claims tribunal that the deceased was running shop of general merchant and had earned Rs. 6,000/- per month. The claimant no. 1 Smt. Meera Singh, who appeared as PW-1 had also stated on oath that the deceased has taken a shop in the house of Anil Yadav on payment of rent of Rs. 1,000/- per month. She further states that the deceased had earned Rs. 6,000/- per month. PW-3 Ranjeet Singh who was running business adjacent to the shop of deceased had also stated on oath that the deceased has taken the shop on payment of rent of Rs. 1,000/- per month and had earned Rs. 6,000/- to 7,000/- per month. The claimants had not adduced any documentary evidence in respect of income of

the deceased and only oral evidence has been adduced by the claimants to prove the income of the deceased. The claimants had not filed any rent receipt to prove that the shop was taken on rent by the deceased for doing business of general merchant and even owner of the shop Anil Yadav was not produced in evidence. The claimants had not produced any documentary evidence in respect of sale and purchase and even not adduced any evidence of income and expenses of shop. The claims tribunal has disbelieved the income in absence of any authentic evidence in respect of income of the deceased. The findings recorded by the claims tribunal in respect of income of the deceased is based on evidence and materials which are available on record. In the present case the accident was occurred in the year 2006 and the claims tribunal has accepted the notional income of the deceased as Rs. 3,000/- on relying the judgment of Hon'ble Apex Court in the case of **Laxmi Devi (supra)** in which accident was taken place in the year 2004. Learned counsel appearing on behalf of claimants-appellants had failed to point out any illegality or irregularity in findings recorded by the claims tribunal in respect of income of the deceased.

25. So far as, multiplier is concerned, it was the case of the claimants in the claim petition that the deceased was aged about 30 years at the time of accident. The postmortem report of the deceased has discloses the age as 30 years. The claimants had also stated on oath before the claims tribunal that the age of the deceased was 30 years at the time of accident. There was no evidence or materials before the claims tribunal that the deceased was above 30 years. The claims tribunal has committed illegality in applying the multiplier of 16 accepting the age of the deceased in between 30 to 35 years, whereas, the multiplier of 17 is application in the present case as provided by Hon'ble Apex Court in the case of **Sarla Verma (supra)** for the age group of 26 to 30 years.

26. No other ground has been pressed by learned counsel for the appellants for enhancement of compensation. The finding recorded by the claims tribunal in respect of contributory negligence of the deceased to the extent of 50% has also not been challenged by the learned counsel for the appellants and even no grounds has been taken in memo of appeal in this regard.

27. In views of above, the compensation awarded by the claims tribunal is re-assessed as under :-

1. Monthly Income : Rs. 3,000/-

2. Annual Income : Rs. 3,000/- x 12 = Rs. 36,000/-

3. Future prospects : (40%) = Rs. 14,400/-

4. Total annual income : Rs. 36,000/- + Rs. 14,400/- = Rs. 50,400/-

5. Deduction towards personal expenses (1/4) : Rs. 50,400/- - Rs. 12,600/- = Rs. 37,800/-

6. Multiplier applicable (17) : Rs. 37,800/- x 17 = Rs. 6,42,600/-

7. Deduction towards contributory negligence (50%) : 3,21,300/-

7. Non-pecuniary damages : Rs. 70,000/-

Total : Rs. 3,21,300/- + Rs. 70,000/- = Rs. 3,91,300/-

28. The Appeal is hereby partly allowed and award of the Claims Tribunal is modified and compensation awarded by the Claims Tribunal is enhanced from Rs. 1,96,750/- to Rs. 3,91,300/-. The claimants-appellants are also entitled for interest at the rate of 6% on the entire amount from the date of filing claim petition. The respondent no. 1 namely The New India Assurance Company Ltd. is directed to pay enhanced amount as well as interest to the claimants within two months from today.

29. No order as to costs.

30. However, it is made clear that if the respondent/Insurance Company had complied the judgment of this court dated 04.12.2021, passed in First Appeal From Order No. 3764 of 2010 and had paid the enhanced amount to the claimants, the same cannot be recovered from the claimants-appellants. If the enhanced amount has not been paid, the Insurance Company is required to pay Rs. 1,94,500/- along with interest to the claimants within two months. The claimants are entitled to receive the entire deposited amount without furnishing any surety.

Order Date :- 23.4.2025

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