

Tarawati Tandon and ors. Vs. Hari Dutt Pathak and ors.

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Court : Allahabad

Decided On : Jan-11-1994

Reported in : 1994ACJ638

Judge : A.P. Misra and ;S.K. Verma, JJ.

Appeal No. : F.A.F.O. Nos. 520 and 587 of 1981

Appellant : Tarawati Tandon and ors.

Respondent : Hari Dutt Pathak and ors.

Judgement :

A.P. Misra, J.

1. The aforesaid two appeals arise out of a common judgment and order passed by Motor Accidents Claims Tribunal, Almora. Hence, it is being disposed of by means of a common judgment as both the appeals were also heard through counsel who were common to both the appeals.

2. F.A.F.O. No. 520 of 1981 has been preferred by the claimants for enhancement of claim to the extent claimed in the petition as claim for Rs. 23,100/- only was decreed. The other appeal No. 587 of 1981 is by National Insurance Co. Ltd. that the decree could only be up to Rs. 5,000/- and any award over and above that is illegal so far as appellant insurance company is concerned, hence to that extent it

may be set aside. The owner of the vehicle did not contest the claim of both the appellants in both the appeals as none appeared in spite of notice.

3. In short, the facts of the case are: that the accident with motor vehicle USR 2024 took place on 15th December, 1979, when the bus fell into a khud near Baijnath on Baijnath-Bageshwar Road, which resulted in the death of one K.L. Tandon. The owner of the vehicle is Hari Dutt Pathak. The widow, minor children and mother of the deceased K.L. Tandon filed the claim petition claiming compensation of Rs. 3,00,000/-. The respondent contested the claim that the accident was not the result of any negligent or rash driving but was on account of mechanical failure and further the claim is highly excessive. The Claims Tribunal held that the accident took place on account of rash and negligent driving of the vehicle and hence awarded compensation of Rs. 23,100. The said award was both against the owner and the insurance company jointly and severally along with interest on the said amount of 6 per cent per annum from the date of petition to the date of realisation.

4. The appellants while claiming for enhancement of the compensation pressed only one point that the finding of the Tribunal that the income derived by the deceased was from the income of the firm in which he had only 1/4th share is illegal as the said firm was a proprietorship firm of the deceased. Thus the calculation of the income, instead of reducing to 1/4th amount, should have been done on the whole amount of the income of the firm. In this regard, we find that Tribunal relied on paper No. 18-C to show that Rs. 10,820/- was the returned income for the year 1979-80 and since this return shows that the firm was a Hindu undivided family business and as per the statement of DW 1, Tarawati, the deceased had three brothers, who were members of the Hindu undivided family, shows that the deceased had only 1/4th share. Learned counsel for the appellants strenuously referred to the said paper No. 18-C that it shows that the income was of the partnership firm. We have perused the said document, which is, in fact, certificate issued by the Income Tax Officer, Kashipur. This certificate shows that Kanhaiya Lal as the karta of Ram Gopal Ganga Nath is assessed to income tax in that circle showing the income for the assessment years 1975-76 to 1979-80. The relevant year in question for the purpose of computing income is 1979-80 showing

the income of Rs. 10,820/-. This document is very clear and we have no doubt that Kanhaiya Lal is only karta of the firm which could only be in the case of Hindu undivided family having other coparcener shares in the same. We do not find any error in the finding recorded by the Claims Tribunal in computing the income of the deceased on the basis of his share in the said firm and on the basis of return as aforesaid for the year 1979-80 the income calculated of the deceased is Rs. 2,200/-. In *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134 (SC), the Supreme Court held that the income should be multiplied with the remaining years of life and be divided by 2, so that half of the amount will become the reasonable compensation for the family members of the deceased. The expected span of life calculated by the Tribunal in the relevant year in question was 58 and the deceased being of 37 years of age the aforesaid income was multiplied by 21 which would be the expected years he would have lived in order to reach 58 years and then by dividing half of the said principal, we find the amount to be Rs. 23,100/-. We do not find any error in the same especially in view of no other point being pressed by the learned counsel for the appellants. Neither he disputed the proposition laid down in the said decision of the Supreme Court. Thus, for the aforesaid reasons, the appeal filed by the claimants for enhancement of compensation is liable to fail.

5. Coming to the appeal filed by the National Insurance Co. Ltd., the argument is that awarding compensation to the claimant over and above Rs. 5,000/- as against the insurance company is illegal and hence liable to be set aside to that extent. As we have observed above, the claim which has been decreed has been decreed jointly and severally. This again is only a question raised by the appellant in this appeal. Reliance has been placed under Section 95(2)(b)(ii)(2) and (4) of the Motor Vehicles Act at the relevant time in question. The matter stands settled by the decision in *M.K. Kunhimohammed v. P.A. Ahmedkutti* 1987 ACJ 872 (SC), in which it is held that under said section before amendment by Act 47 of 1982 in an accident of a bus run as a stage carriage where a passenger dies the liability of insurance company is what is prescribed under Sub-clause (4) which is the maximum amount payable in respect of each passenger. Thus, for each passenger the insurance company is only liable to pay Rs. 5,000/-. This decision has overruled the earlier decision of this court reported in *New India Assurance Co. Ltd. v. Mahmood Ahmad* 1984 ACJ 390 (Allahabad). In view of this, the

maximum liability which can be fastened on the appellant insurance company would be Rs. 5,000/- only which is the statutory liability of the appellant at the relevant time in question. The award of the Tribunal over and above that making the appellant jointly and severally liable for the whole amount of award is not sustainable. Accordingly, this appeal is liable to be partly allowed. The liability of the insurance company (appellant in the other appeal) is fixed only to the extent of Rs. 5,000/- The balance amount could be recovered from the owner of the vehicle.

6. Accordingly, F.A.F.O. No. 520 of 1981 is dismissed and F.A.F.O. No. 587 of 1981 is partly allowed. Costs on parties.

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