Bhawna and ors. Vs. Ashok Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/470798

Court : Allahabad

Decided On : Aug-12-1994

Reported in : I(1995)ACC110; 1995ACJ764

Judge : S.C. Mohapatra and ;C.A. Rahim, JJ.

Appeal No. : F.A.F.O. No. 726 of 1986

Appellant : Bhawna and ors.

Respondent : Ashok Kumar and ors.

Disposition : Appeal allowed

Judgement :

C.A. Rahim, J.

1. This appeal has been preferred by three appellants, namely, the wife, father and mother of the deceased Mukesh Kumar. An accident was caused on 28.7.1984 and in that accident one Mukesh Kumar expired. On the claim petition filed by these appellants the learned Tribunal Judge allowed Rs. 15,000/- under Section 92-A of the Motor Vehicles Act, 1939 and Rs. 55,000/- to the claimants but not in equal proportion. It has been stated that the deceased was aged about 21 years. He was working in a private concern and getting Rs. 1,200/- per month as salary. He was also running a patthar khadan from which he was earning Rs. 400/- per

month. He was also owning a tractor from which he was deriving an income at the rate of Rs. 400/-per month. It was contended that the deceased was spending Rs. 1,500/- per month towards his family and claimed Rs. 11,00,000/- and odd. The allegation was that while Mukesh Kumar was proceeding on a motor cycle he was hit by a bus No. DLP 4416 which was coming from opposite direction, running at a high speed and the accident was caused due to rash and negligent driving of the driver concerned. Mukesh Kumar received serious injuries and died just after the accident.

2. Being aggrieved by the amount of compensation all the claimants filed this appeal. The truck (Sic. bus) owner appeared before this court but did not choose to contest by filing counter affidavit. He was also found absent at the time of hearing. The insurance company filed a cross-objection and contended that out of the total amount awarded to the claimants the insurance company is liable to pay to the extent of Rs. 50,000/-. Learned counsel appearing for the claimants has submitted that the learned Tribunal Judge was not right in holding that the deceased was not earning Rs. 1,200/-per month from the company where he was working as Manager. It has been contended that he was working at Kanpur Granite Stone Company and the said fact of service was proved by Narain Das, PW 3. The salary certificate and copy of the sales tax report have been proved showing that the deceased was an employee of that concern and was receiving Rs. 1,200/- per month. In the judgment the learned Tribunal Judge disbelieved the story of serving the company and also receiving Rs. 1,200/- per month, as stated, on the ground that the father of the deceased and Narain Das, PW 3, being co-owners, it was unusual that any service was offered to the deceased by his father's company and he was receiving emolument for that. He has also stated that the salary certificate has not been proved by the father of the deceased or by PW 3. He has pointed out that in the copy of the sales tax report the deceased was shown as accountant and not as manager. He has also held that no agreement or resolution has been produced by the claimants to show that the service of the deceased was in existence.

3. While approaching the reasons forwarded by the learned Tribunal Judge it appears to us that he was very much technical in weighing the evidence in respect

of the service of deceased Mukesh Kumar. From Exh. 12 and Exh. 13, salary certificate and copy of the sales tax report, it appears that the deceased was in the service of Kanpur Granite Stone Company ex. facie. Even if we consider that he was not receiving any emolument for the service rendered by the deceased to that firm, be it of his father or anybody else, it was done by him for gain. It has not been proved that it was their family business while it has been taken into account by the learned Tribunal Judge that Narain Das, PW 3, was a partner. After going through the evidence in this respect and reasons recorded by the learned Tribunal Judge we are of the opinion that the deceased Mukesh Kumar was serving the company prior to the accident and was receiving Rs. 1,200/- per month.

4. The learned Tribunal Judge awarded compensation on the basis of the earning of the deceased from patthar khadan and from tractor. The claimants' contention was that the deceased was earning Rs. 800/- in all from those two sources. But the learned Tribunal Judge failed to consider that even after the death of the deceased the said patthar khadan and tractor are in existence and the family was/is not deprived of the income from those two sources. On these two counts the claimants are not entitled to get any compensation. The decisions in these respects are set aside.

5. With regard to the quantum of compensation we find that the claimants admitted that the deceased was enjoying Rs. 500/- per month towards his personal expenses. So he must have spent Rs. 700/-out of Rs. 1,200/- towards his family. Considering the age of the deceased we are of the opinion that the claimants are entitled to just compensation if multiplier of 16 is allowed [National Insurance Co. Ltd. v. Swaranlata Das, 1993 ACJ 748 (SC)]. They will also receive Rs. 16,000/- for the loss to the estate and loss of consortium. So we find that the claimants are entitled to Rs. 1,50,000/- towards compensation for the death of Mukesh Kumar in that accident.

6. While awarding compensation learned Tribunal Judge had awarded Rs. 22,000/-plus interest to the parents (appellant Nos. 2 and 3 before us) and Rs. 48,000/- to the wife of the deceased (appellant No. 1 before us). As the wife was very young at that stage learned Tribunal Judge apprehended that she may

remarry and accordingly he gave a direction that Rs. 16,000/- be invested in a fixed deposit for three years and Rs. 16,000 for six years and after completion of the period that money will go to the wife of the deceased subject to her not remarrying in the meantime. The accident occurred in the year 1984, award was made on 7.3.1986. The appeal was filed on 5.7.1986. Thereafter, a long span of 8 years has elapsed. There is no counter affidavit to the effect that the wife of the deceased remarried during this period. Considering these circumstances we hold that the wife of the deceased will receive Rs. 80,000/- and rest of the amount will go to the parents of the deceased with an interest of 6 per cent per annum from the date of filing of the petition before the Claims Tribunal. We also hold that the respondent No. 3, insurance company, is liable to pay Rs. 50,000/- plus interest and rest of the amount would be paid by the owner of the truck (Sic. bus). Let respondent Nos. 1 and 3 [truck (Sic. bus) owner and insurance company] pay the compensation within two months from this date otherwise interest at the rate of 15 per cent will be levelled on the entire unpaid amount.

7. The appeal is, therefore, allowed and is disposed of accordingly. No order as to costs.