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Court : Allahabad

Decided On : Oct-29-1984

Reported in : 1(1985)ACC238

Judge : O.P. Saxena and I.P. Singh, JJ.

Appellant : Raghuraji Devi and ors

Respondent : Haji Lal Mohammad Biri Works

Judgement :

O.P. Saxena, J.

1. This is an appeal against the order dated 30th March 1977 passed by the Motor Accident Claims Tribunal (Additional District Judge) Allahabad awarding a sum of Rs. 12,500/- with interest @ Rs. 6% per annum from the date of order till the date of payment and proportionate costs. It was further directed that the entire compensation, interest and proportionate costs will be payable by respondent No. 2.

2. The facts giving rise to this appeal are that on 20th September 1975 at 4.15 P.M. in front of the shop of Baij Nath of village Lari Bari, district Allahabad one Ram Dularey met with a motor accident and succumbed to the injuries on his way to the hospital. He was going on the road on his left side when he was run over by Jeep No. UTB 3307. It is said that the jeep was being driven rashly and

negligently. A report of the accident was lodged on the same day at P.S. Shankergarh, District Allahabad.

3. The claim petition was filed by the widow, four sons and a widowed daughter of the deceased. The compensation of Rs. 39,600/- was claimed.

4. The petition was contested by opposite party No. 1, the owner of the vehicle. It was denied that any accident took place with Jeep No. UTB 3307. The compensation claim was also assailed.

5. Opposite party No. 2 also contested the petition on similar grounds.

6. The petitioner examined PW 1 Vishnu Prasad Sharma, Deceased's mother's brother's son, PW 2 Braj Nath. PW 3 constable Murlidhar, PW 4 Smt. Raghuraji Devi and PW 5 Dr. R.C. Gupta, the Medical Officer, who conducted the post mortem examination. The opposite parties adduced no evidence.

7. The Tribunal held that the accident was caused by Jeep No. UTB 3307, as alleged, that the accident took place due to the rash and negligent driving of the Jeep and that the claimants are entitled to Rs. 12,500/- as compensation. Being aggrieved the claimants have come in appeal.

8. We have heard Sri A.L. Jaiswal, Advocate, for the appellants and Sri A.K. Saxena, Advocate, for respondent No. 2.

9. The learned Counsel for the appellants submitted that the Tribunal awarded grossly inadequate compensation.

10. The tribunal determined the age of the deceased as 60 years and fixed the age of longevity as 70 years. We do not find any merit in the contention of Sri Jaiswal that the Tribunal ought to have accepted the statement of PW.4 Smt. Raghuraji Devi regarding the age of the deceased. She herself gave her age as 48 years. She is an illiterate person. She could not have any personal knowledge regarding the age of her husband and she was not a competent witness for the same. The claimants did not file any birth certificate or extract of Kutumb Register in which the age is mentioned. They did not adduce any reliable evidence to prove

the age of the deceased. The evidence also does not show that no relative elder to the deceased is alive. In the circumstances, the Tribunal had no choice but to accept the age given in the post mortem report which was duly proved by PW 5, Dr. R.C. Gupta.

11. The Tribunal determined Rs. 3000/- per annum as the annual income from cultivation which could be available to the family for meeting household expenses. This amount has not been challenged before us.

12. The Tribunal determined compensation at Rs. 30,000/- and thereafter allowed deduction of Rs. 7,500/- on account of lump sum payment and Rs. 10,000/- on account of uncertainties of life. The Tribunal, thus, determined the compensation at Rs. 12,600/- and awarded Rs 1000/- for loss of consortium.

13. We accept the contention of Sri Jaiswal that the deductions allowed by the tribunal were too much excessive. The Tribunal had not referred to any authority for allowing 25% deduction on account of lump sum payment and 32% reduction on account of uncertainties of life. In view of the numerous decisions of this Court, the Tribunal ought to have allowed a total deduction of 20% for lump sum payment and uncertainties of life. Thus, the amount payable to the claimants comes to Rs. 24,000/- and adding Rs. 1000/- for loss of consortium, the total comes to Rs. 25,000/-.

14. We find that the Tribunal awarded interest from the date of order only. The interest ought to have been awarded from the date of the petition itself.

15. No other point was urged before us.

16. We, therefore, allow the appeal partly and enhance the compensation awarded by the Tribunal to Rs. 25,000/- and interest at 6% per annum from the date of petition till the date of payment and proportionate costs. We maintain the order passed by the Tribunal that opposite party No. 2 would pay the entire amount.

17. Costs of the appeal shall be easy.