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Court : Allahabad

Decided On : Feb-01-1995

Reported in : 1995ACJ1053

Judge : S.R. Singh, J.

Appeal No. : F.A.F.O. Nos. 249 and 152 of 1979 and 380 of 1982

Appellant : Meena Misra and anr.

Respondent : First Additional District Judge and ors.

Advocate for Def. : L.P. Naithani, ;R.R. Singh, and ;B.D. Srivastava, Advs.

Advocate for Pet/Ap. : R.N. Singh, ;A.K. Saxena and ; S.N. Singh, Advs.

Disposition : Appeal allowed

Judgement :

S.R. Singh, J.

1. All the aforesaid three appeals stem from the judgment and order dated 31.1.1979 delivered by 1st Addl. District Judge, Jaunpur, in Motor Accident Claim Petition No. 3 of 1976 having its origin in accident occurred on 9.5.1976 out of the use of motor vehicle No. UTO 49.

2. The victim of the accident, namely, Dr. Subhash Misra, was a doctor who had passed his M.B.B.S. examination and was undergoing internship at S.S.L. College, Varanasi and was being paid a stipend of Rs. 350/- per month at the time of accident. He was about 30 years of age at the time of accident. The widow of the deceased, Meena Misra, and the mother, Naurangi Devi, claimed compensation quantified at Rs. 2,00,000/- on the premise that the deceased Dr. Subhash Misra had suffered death because of serious injuries sustained by him in the accident which came about due to goof-up in the bus management. The claim petition was contested by the owner of the vehicle, Raj Kumar Gupta, the appellant in F.A.F.O. No. 249 of 1979 as well as by the New India Assurance Co. Ltd., the appellant in F.A.F.O. No. 152 of 1979.

3. In the ultimate analysis, the learned Tribunal found it 'established beyond doubt that the death of Dr. Misra took place on account of negligence on the part of the bus management inasmuch as the conductor of the bus was not agile enough to have ensured proper locking of the door and the negligence on his part culminated in the fall of Dr. Misra from the bus leading to his being seriously concussed and his subsequent death'. The Tribunal further held that the claim petition was maintainable at the instance of the widow and the mother of the deceased but at the same time, it also held that so far as the mother was concerned she was, at the time of her son's death, leaning on her husband and naturally, the estates surviving the father of the deceased would be proportionately entailed on her and accordingly, the Tribunal ruled that the mother was not entitled to any compensation as such. As regards the widow, the Tribunal held that the deceased being a youth of 30 years, his longevity could be estimated to last up to 60 years. The Tribunal in the backdrop of the fact that the deceased was being disbursed a stipend of Rs. 350/- per month at the time of the accident, held that it could not be ruled out that even if Dr. Misra was able to save a sum of Rs. 2,000 per annum, the entire saving of his lifetime could not be less than Rs. 60,000/-. Accordingly, the Tribunal awarded a sum of Rs. 60,000/- by way of compensation to the widow out of which the New India Assurance Co. Ltd. was fastened with the liability to pay Rs. 50,000/- and the owner, Raj Kumar Gupta, Rs. 10,000/-. The costs of litigation were also awarded as against the owner of the vehicle.

4. Having heard the learned counsel for the parties and having bestowed my deep considerations to the facts and circumstances of the case, I am persuaded to take the view that the appeal preferred by the claimants is apt to be allowed in part.

5. In Jyotsna Dey v. State of Assam 1987 ACJ 172 (SC), it was observed that the span of life should be taken to be 70 years in view of high rise in life expectancy. The deceased in the instant case was a doctor, studded with brilliant academic career with future prospects of advancement in life and career, the Tribunal in the instant case was not justified in underestimating the longevity to mere 60 years. With due regard to the observations made by the Supreme Court in Jyotsna Dey (supra) and the factum that the deceased was a doctor, I am of the view that the life span in the present case should have been elongated to 70 years.

6. In General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas, 1994 ACJ 1 (SC), the Supreme Court has held that for assessment of damages to compensate the dependants, the Claims Tribunal has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of the life expectancy and the chances that the deceased might have got better employment, etc., etc.

7. In Concord of India Insurance Co. Ltd. v. Nirmala Devi 1980 ACJ 55 (SC), the Supreme Court held as under:

The determination of the quantum must be liberal, not niggardly, since the law values life and limb in a free country in generous scales.

8. Having regard to the normal span of life of a doctor and also to the brilliant academic career of the deceased and prospective advancement in life and the consequent income of a doctor in these days as also the fact that had the deceased been alive it would have taken 4 to 5 years for him to settle himself either in some Government job or as a private practitioner, I am of the view that

the deceased would have laid aside on an average a sum not below Rs. 300/- per month which, if multiplied by 35 years, would approximate to Rs. 1,30,000/-. The Tribunal cannot be said to be justified in working out the annual saving of the deceased merely on the basis of his stipendiary income as an internee. Taking the annual saving of the deceased at the rate of Rs. 300/- per month and further stretching his longevity to 70 years, the amount of compensation payable to the claimants would come to Rs. 1,26,000/-(Rs. 3,600/- x 35) which may be rounded up to Rs. 1,30,000/- out of which a sum of Rs. 1,00,000/- may be paid to the widow and Rs. 30,000/- to the widowed mother of the deceased with due regard to their longevity after the death of the deceased, Dr. Subhash Misra. The appeal preferred by the claimants deserves to be allowed accordingly.

9. As regards the appeal of the New India Assurance Co. Ltd., the argument advanced by its counsel was that in view of Section 95(2)(b) of the Motor Vehicles Act, the liability of the insured cannot exceed Rs. 5,000/- in respect of passengers as the provision stood before its amendment by Act 47 of 1982 with effect from 1.10.1982. The learned counsel has placed credence upon a decision of the Supreme Court in M.K. Kunhimohammed v. P.A. Ahmedkutty, 1987 ACJ 872 (SC), wherein it has been held that where a passenger bus run as stage carriage is involved in an accident and only one passenger dies, the liability of the insurer is limited to the amount of only Rs. 5,000/-. The submissions made by the counsel for the insurance company has no cutting edge and as such, cannot be countenanced in view of the fact that the company seems to have reconciled itself for a liability to the extent of Rs. 50,000/-. The learned Tribunal recorded a categorical finding on this count in these words:

It is evident from the record that the New India Assurance Co. Ltd. was liable to the extent of Rs. 50,000/- only as agreed by it in the agreement clause regarding liability to third parties in case of death or of bodily injury to any person caused by or arising out of the use of motor vehicle...

But for this agreement, the insurance company would have been fastened with the liability to the extent of statutory limit.

10. In the next limb of submissions, the learned counsel for the company added for emphasis that the company had agreed to indemnify the owner of the vehicle to the extent of Rs. 50,000/- in case of death of a third party and not in the case of a passenger. This submission made by the counsel appearing for the company too does not commend itself for my acceptance vis-a-vis the decision of Madhya Pradesh High Court in New India Assurance Co. Ltd. v. Kishori, 1987 ACJ 892 (MP), with which I am in respectful agreement. The policy in the instant case binds the insurer to indemnify the insured to the extent of Rs. 50,000/- in case of the death of a third party. The words 'third party' have been interpreted to mean in Stroud's Judicial Dictionary, 3rd. Edn., Vol. 4, pp. 3019-3020, as quoted in 1987 ACJ 892 (MP) as under:

'Third party risks' Road Traffic Act, 1930, (20 & 21 Geo. 5 C.5, C. 43-s. 35) connotes that the insurer is one party to the contract, that the policy holder is another party, and that claims made by others in respect of the negligent use of the car, may be naturally described as claims by third parties.

11. In the conspectus of the above discussion, I find the appeal preferred by the insurance company is jejune of any merit.

12. So far as appeal preferred by the owner of the vehicle goes, it would suffice to say that this appeal is bereft of any merit qua the discussions made in the appeal preferred by the claimants. Therefore, the F.A.F.O. No. 249 of 1979 is liable to be dismissed.

13. Having regard to the conclusions arrived at supra, the F.A.F.O. No. 380 of 1982 is allowed and the award of the Tribunal is modified and claimants are held entitled to Rs. 1,30,000/- out of which a sum of Rs. 1,00,000/- may be paid to the widow and Rs. 30,000/- to the widowed mother of the deceased with due regard to their longevity after the death of the deceased Dr. Misra, together with the interest at the rate of 6 per cent per annum from the date of application. The appeal (F.A.F.O. No. 249 of 1979) preferred by the owner of the vehicle fails and is dismissed accordingly.

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