
(2013) 1 ACC 674 : (2013) ACJ 182 : (2011) 4 ADJ 55 : (2011) 6 AWC 6441 : (2011) 8 RCR(Civil) 3158

Allahabad High Court (Lucknow Bench)

Case No: First Appeal From Order No. 699 of 2003

Smt. Premwati and
Another

APPELLANT

Vs

Shiv Shanker and
Others

RESPONDENT

Date of Decision: March 24, 2011

Acts Referred:

Constitution of India, 1950 " Article 15#Motor Vehicles Act, 1988 " Section 163A, 166, 168, 173#Penal Code, 1860 (IPC) " Section 11

Citation: (2013) 1 ACC 674 : (2013) ACJ 182 : (2011) 4 ADJ 55 : (2011) 6 AWC 6441 : (2011) 8 RCR(Civil) 3158

Hon'ble Judges: Sudhir Agarwal, J; Devi Prasad Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. By the Court.--Heard learned Counsel for the Appellant as well as learned Counsel for the Respondents and perused the record.

2. This appeal u/s 173 of Motor Vehicle Act, 1988 is against the judgment and award dated 3.9.2003 passed by Motor Accident Compensation

Tribunal/Additional District Judge of Court No. 2 in Motor Accident Case No. 193 of 2002.

3. One Km. Vijay Laxmi, aged about 21 years old happens to be daughter and only child of claimant-Appellants suffered an accident from Vehicle

No. U.P. 30 A 5139 on 5.5.2002. When Km Vijay Laxmi was coming to her residence at Village Khemipur and crossing the road a Jeep No.

UP 30 A 5139 driven rashly and negligently hit the girl and in consequence thereof she suffered and succumbed to the injury. A first information

report was lodged with regard to accident in question. The claimant-Appellants approached the Tribunal claiming compensation u/s 166 of Motor

Vehicles Act to the extent of Rs. 10,00,000/- (ten lacks). The Tribunal framed issues with regard to accident, rash and negligent driving, driving

licence etc. and has recorded a finding that the accident was occurred from the Jeep in question when the deceased was crossing road to reach her

house. There appears to have no dispute with regard to accident in question. The Respondent-Insurance Company has also not filed any cross

appeal challenging the finding recorded by Tribunal.

4. The solitary question involved in the present case is with regard to enhancement of compensation. Though the tribunal has recorded a finding

that in case the sole child of claimant-Appellants would have survive she would have been helpful for them during passage of time. However,

Tribunal has granted compensation to the tune of Rs. 60,000/- with interest at the rate of 5%. It appears that the Tribunal has not taken note with

regard to multiplier given in Second Schedule of Motor Vehicle Act. Though the multiplier given in Second Schedule is with regard to the cases

filed u/s 163A of the Motor Vehicles Act and it is always open to Tribunal to award just and proper compensation in terms of provision contained

in Sections 166 read with 168 of Motor Vehicles Act but as a general practice throughout the country in pursuance to various pronouncement of

Hon"ble Apex Court ordinarily, the multiplier given in Second Schedule of Motor Vehicles Act is followed, unless there is some different setup

showing entitlement for higher compensation to meet the requirement of justness is established. Accordingly we are of the view that Tribunal should

have applied the multiplier keeping the age of deceased which is 21 years old in terms of Schedule II of the Motor Vehicles Act.

5. One of the argument advanced by learned Counsel for the Respondents is that being a girl no compensation should have been given in terms of

multiplier and the fixed amount given by Tribunal is just and proper.

6. The argument advanced by learned Counsel for the Respondents and the finding recorded by Tribunal seems to be not sustainable. Whether the

deceased, a 21 years old, was boy or girl, so far as parents are concerned for them both have equal importance. It may be noted that if a female

child obtain same love and affection and serve their parents in same manner as a male child. We do not find any difference between male and

female child. It is not necessary to give a reference to number of ladies who have served their parents up to mark and even better than the male

child.

7. In view of Article 15 of the Constitution of India, there cannot be discrimination on the ground of religion, race, caste, sex or, place of birth. u/s

11 of the Indian Penal Code, the word, "person" includes, male and female both. According to Sout's Judicial Dictionary of Word and Phrases,

[7th Edn., on page 209], the word, "person" includes a corporation as well as a natural person, means male and female both. Section 163-A or

Section 166 of Motor Vehicles Act deals with the payment of compensation in accidental matters. Any person who has sustained injury or the

legal heirs, successors or dependents of a person who suffered accidental death may claim compensation in accordance with law under the Motor

Vehicles Act. Whether it is the death of a male child or female child or a boy or a girl or a grown up lady or man, shall not make any difference.

Awarding of lesser compensation in the event of death of a girl, shall amount to gender discrimination which is constitutionally prohibited.

8. Moreover, in the present case, it is pleaded by the Appellant before the Tribunal that the monthly earning of deceased Km. Vijay Laxmi was

about Rs. 3,500.00 per month being engaged in embroidery and other works. The payment of fixed amount of Rs. 60,000.00, seems to be not

correct approach.

9. Accordingly due weight should have been given by Tribunal while awarding compensation even if the deceased is a girl without any gender

discrimination. In the present case the deceased girl is of 21 years old died because of rash and negligent driving of the Jeep in question. For a

person of 21 years age under Second Schedule multiplier of 17 should have been applied and in case the Tribunal has failed to assess the actual

income, the notional income should be assessed for the purpose of payment of compensation. Though under the Second Schedule notional income

has been given as Rs. 15000/- per year but Supreme Court in Laxmi Devi and Ors. v. Mohammad Tabbar and Anr. 2008 (3) ALJ 612, held that

Second Schedule of Motor Vehicles Act requires modification since after lapse of time it has lost its sanctity. This aspect of the matter has been

considered by a Division Bench of this Court in Guddi Singh and Ors. v. Baboo and Ors. 2010 (28) LCD 1786 and in para 15 the Court held as

under:

15. In the instant case, keeping in view the peculiar facts and circumstances of the case, the Tribunal has awarded a lump-sum compensation of

Rs. 50,000/- without applying the multiplier and without taking into consideration the other factors, like age etc. The deceased Sri Nanhe Singh

was aged about 40 years. Since no proof of income was submitted, the notional income will have to be taken as per the ratio laid down in the case

of Laxmi Devi and Ors. v. Mohammad Tabbar and Anr. 2008 (2) TAC 394 (SC), where it was observed that the minimum income even

notionally should not be less than Rs. 3000/- per month. Accordingly, in case the income of the deceased is assessed at the rate of Rs. 3000/- per

month and 1/3rd is deducted in lieu of personal expenses, the net income shall be Rs. 2000/- per month i.e. Rs. 24,000/- per year. Since the

deceased was aged about 40 years, multiplier of 15 will apply under Schedule II of Motor Vehicles Act. Thus, the compensation will come to Rs.

3,60,000/-. In addition, the claimants are also entitled for Rs. 2000/- as funeral expenses; Rs. 2500/- for loss of Estate and Rs. 5000/- as loss of

consortium. Thus, total compensation comes to Rs. 3,69,500/- (Three lacs sixty nine thousand and five hundred).

10. In view of above, we are of the view that even notional income should not be less than Rs. 3000/- per month. Accordingly, in case the income

of deceased is assessed at the rate of Rs. 3,000/- per month and 1/3rd is deducted in lieu of personal expenses, the net income shall be Rs. 2000/-

per month, i.e., Rs. 24,000/ - per year. Since the deceased was aged about 21 years, the multiplier of 17 should be applied while assessing the

income. The total compensation should be come to Rs. 4,08,000/-, loss of estate Rs. 5,000/- and funeral expenses Rs. 2,500/- The total

compensation now is 4,15,500/-. Interest awarded by the Tribunal is also too less to approve and enhanced to 8%.

11. In view of above, we are of the view that Appellants shall be entitled for compensation to the tune of Rs. 4,15,5000/-. The impugned judgment

and award dated 3.9.2003 passed by Tribunal stands modified accordingly. The appeal is accordingly allowed with the finding that Appellants

shall be entitled for compensation to the tune of Rs. 4,15,500/- (four lacs, fifteen thousand, five hundred only), as calculated above, with simple

interest at the rate of 8% per annum. The aforesaid amount shall be deposited in the Tribunal within two months from today and Tribunal shall

proceed in terms of modified word (supra) expeditiously. The amount already paid to Appellants shall be adjusted from the compensation

enhanced by this Court. Appeal allowed accordingly. No order as to costs.