

(2013) 09 AHC CK 0169

Allahabad High Court

Case No: First Appeal From Order Defective Nos. 777, 778, 664, 665 of 2009 and 374 of 2010

New India Assurance Company
Ltd.

APPELLANT

Vs

Radhika Chaturvedi

Radhika Chaturvedi Vs
Santosh Kumar
Siya Ram
Sharma Awasthi and Others Vs
Santosh Kumar and Others

RESPONDENT

Date of Decision: Sept. 29, 2013

Citation: (2014) 2 ACC 49

Hon'ble Judges: Sibghat Ullah Khan, J; Satish Chandra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. All these appeals have been filed by the Insurance Company as well as the claimant-respondents u/s 173 of Motor Vehicles Act, 1988, against the impugned judgments and orders dated 21.2.2009; and 31.1.2009, passed by the Motor Accident Claims Tribunal, Lucknow, in Claim Petition Nos. 85 of 2006, 86 of 2006 and 221 of 2006. The brief facts of the case are that on 25.1.2006, unfortunate parent of the claimant, namely, Sri Rajeev Chandra Chaturvedi and Smt. Leena Chaturvedi were travelling from Delhi to Lucknow in their Scorpio Jeep No. UP-32 BF-2269. At about 7.30 in the morning, when the Jeep reached near Sitapur, from the opposite direction a Truck No. BR24G0215 was coming, whose driver was driving the Truck carelessly and negligently and hit the Jeep, which resulted death of Sri Rajeev Chandra Chaturvedi; Smt. Leena Chaturvedi and their driver Mr. Jyotin Awasthi on the spot. Claimants have filed the claim petitions before the Tribunal. The Tribunal after examining the entire evidence has awarded a total compensation of Rs. 8,07,000, Rs. 27,07,000, and Rs. 2,26,000 pertaining to the husband; wife and driver respectively. The interest @ 7.5% was also awarded against the Insurance Company.

Being aggrieved, the Insurance Company has filed the present appeals. Not being satisfied, the claimants have also filed the cross appeals.

First Appeal from Order Nos. 777, 778, 664 and 665 of 2009

2. With this background, Mr. Anurodh Srivastava, learned Counsel for the appellant-New India Assurance Company Ltd. submits that the accident is not in dispute. It is also an undisputed fact that on the date of the accident, the truck was insured by the appellant-Insurance Company (New India Assurance Company Ltd.). On the date of the accident, the policy was alive. He also accepted that on the date of the accident, the driver was holding a valid driving licence. The truck was holding a valid permit and fitness certificate. His only contention is that the accident was "head on collision", due to contributory negligence of both the drivers i.e. Truck and the Jeep. So, the liability will have to be fixed in the ratio of 50:50 between two vehicles.

3. Learned Counsel for the appellant-Insurance Company also submits that the driver of the Jeep was driving rashly and negligently. The Jeep was insured with M/s. Bajaj Alliance General Insurance Company Ltd. against whom no liability has been fixed by the Tribunal. So, he submits that the liability will have to be divided between the two Insurance Companies. He also submits that no proof of the income of the deceased was submitted before the Tribunal and the compensation is unreasonable on higher side. For this purpose, he has relied on the ratio laid down in the following cases:

- (a) [Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, ;](#)
- (b) [United India Insurance Co. Ltd. Vs. Smt. Rashida Khatoon and Others, ;](#)
- (c) [United India Insurance Co. Ltd. Vs. Smt. Rashida Khatoon and Others,](#)
- (d) [Oriental Insurance Co. Ltd. Vs. Indrasani Devi and Others, ;](#)
- (e) [United India Insurance Company Ltd. Vs. Smt. Sarita Rani Dhaka and others, ;](#)
- (f) [The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, ;](#)
- (g) [United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., ;](#)
and
- (h) Shyamwati Sharma and Others v. Karam Singh and Others, Civil Appeal No. 5316 of 2010.

4. On the other hand, Mr. Pritish Kumar, learned Counsel for the claimant submits that the compensation is meagre in each case. He submits that the multiplier has wrongly applied as 5 and 9 respectively. By looking the age of both the deceased, the multiplier of 13 and 11 respectively will have to be applied. Future prospect will have to be taken into consideration @ 30% per annum.

5. He further submits that the Tribunal has committed an error of law in applying the principle of "higher the income, lower the multiplier", while considering the income Court has considered the lowest income and also applied the lowest multiplier, which is contrary to the law. For this purpose, he relied on the ratio laid down by the Hon"ble Apex Court in the case of [Jyoti Kaul and Others Vs. State of M.P. and Another](#), . He also submits that the interest @ 7.5% per annum is too low and he asked that interest may kindly be enhanced to 10% per annum. Future prospect of the deceased were also not considered by the Tribunal. So, he made a request that the award may kindly be amended suitably. For this purpose, he relied on the ratio laid down by the Hon"ble Apex Court in the case of [Santosh Devi Vs. National Insurance Company Ltd. and Others](#), .

6. Mr. Dinesh Kumar, learned Counsel for the Bajaj Allianz General Insurance Co. Ltd., justified the impugned order. He submits that in the facts and circumstances, there was no contributory negligence on the part of the Jeep. He admits that the Jeep was insured by his Company. He also submits that there was no "head-on collision" as Jeep was not damaged from the front side, it was damaged from the side.

7. We have heard all the parties and gone through the material available on record including the written submission and case laws submitted to the respective parties.

8. In the instant case, the accident is undisputed. On the date of the accident, the Jeep was duly insured with M/s. Bajaj Allianz General Insurance Co. Ltd. and the Truck in question was insured by M/s. New India Assurance Company. On the date of the accident, the policy of each vehicle was alive. The drivers of both the vehicles were holding valid driving licence. The truck in question was holding a valid permit and was plying as per the Rules.

9. From the evidence, it appears that the Truck hit the Jeep from the side, so, it is not a case of the "head-on collision" as claimed by the learned Counsel for the Insurance Company in cross appeals. So, we agree with the findings of the Tribunal that there was total negligence of the driver, who was driving the truck in question. So, M/s. New India Assurance Company is liable to pay the compensation. In this regard the impugned order passed by the Tribunal is upheld and both the appeals filed by the Insurance Company are dismissed.

10. For the enhancement, the claimant-appellant has filed Cross Appeal Nos. 664 and 665 of 2009. Both the appeals were filed by Radhika Chaturvedi, daughter of late Rajeev Chaturvedi and Lina Chaturvedi claiming compensation for the death of her parents. Case No. 85 related to the death of Rajeev Chaturvedi and Case No. 86 to the death of Smt. Lina Chaturvedi.

11. As far as quantum of compensation in respect of death of Smt. Lina Chaturvedi is concerned, the Tribunal below under issue No. 5 held that Vineet Chandra Chaturvedi father of late Sri Rajeev Chaturvedi and grand-father of the applicant

appeared as P.W.-1 and stated that Smt. Lina Chaturvedi was working as commission agent with Provogue India and she was paying income tax and she was earning Rs. 1 lac per month. Income tax return of late Smt. Lina Chaturvedi for the year 2006-07 was filed showing the annual income to be Rs. 9,15,500. In the year 2003-04 income was shown to be Rs. 10 lacs and odd in the income tax return and in the income tax return of 2004-05, the income was shown to be about Rs. 4.5 lacs. The Tribunal below held that deliberately income tax return of 2005-06 was not filed. The income tax return of the year 2006-07 was filed after the death of the lady (she died on 25.1.2006). That return was filed by Sri Vineet Chandra Chaturvedi, father-in-law of the lady as she had died by then. Tribunal below held that the return of 2006-07 proved that the income of the business had increased which showed that there was no reduction in income due to the death of the lady.

12. If a businessman dies in an accident, for determining the compensation, the contribution of the deceased to the business is to be looked into and not total income from the business for the reason that even after the death business continues and in the instant case, it has positively been admitted that the business continued and it did not suffer any loss. In this regard, reference may be made to [New India Assurance Company Ltd. Vs. Yogesh Devi and Others](#), . In that case, the deceased was having 2 buses which were being plied. The Supreme Court held that even after the death, buses and the income from plying the same was available to the legal representatives/dependents of the deceased. Accordingly, only the monthly salary, which was required to be paid to the manager to be engaged after the death of the owner to look after the business was determined as compensation payable to the legal representatives/dependents of the deceased. On the same principle, it has been held in [New India Assurance Co. Ltd. Vs. Charlie and Another](#), , that different criteria will have to be applied for determining the compensation for the death of a person, who was having agricultural land and earning by producing the crops thereupon.

13. The age of Smt. Leena Chaturvedi at the time of death was 49 years. The Tribunal below determined the income of Smt. Leena Chaturvedi to be Rs. 4,50,000 per year and deducted one third therefrom for personal expenses. Accordingly, dependency was determined at Rs. 3 lac per year. However, instead of applying multiplier of 13, lesser multiplier of 9 was applied. This reduced multiplier is justified on two grounds. Firstly, the business continued even after the death of Smt. Leena Chaturvedi and secondly the income tax return of 2005-2006 was not filed. On the same basis, the argument of learned Counsel for Insurance Company that as business continued even after the death of Smt. Leena Chaturvedi, hence the compensation awarded by the Tribunal below is on the higher side is rejected. The higher yearly income determined by the Tribunal stood set off by application of lower multiplier.

14. As far as the income of late Sri Rajeev Chaturvedi is concerned, the Tribunal below held the same to be Rs. 2,40,000 per year even though no income tax return was filed. It was determined only on the basis of certificate issued by Provogue India that Sri Chaturvedi was being paid Rs. 20,000 per meeting and every year he attended 12 meetings. However, documents showing payments every month during one year before his death were not filed. He was aged 52 years. Out of Rs. 2,40,000 per year, one third was deducted towards personal expenses and annual dependency/loss was determined at Rs. 1,60,000 per year. In his case also instead of multiplier of 11, the Tribunal below applied the multiplier of 5. In view of non-filing of income tax return or other relevant documents regarding income except a bald certificate of Provogue India not supported by receipt or copies of Account Books, the income determined by the Tribunal below was on the higher side. However this stands set off by application of lower multiplier.

15. Accordingly, we are of the opinion that compensation awarded to the claimant in case of death of both her parents was just even though on slightly different basis.

16. Accordingly, both the appeals filed by the claimant are also dismissed. First Appeal From Order No. 374 of 2010

17. This appeal is filed by the claimants of deceased driver Sri Jyotin Awasthi. The Scorpio Jeep was driven by the driver, who was an employee of M/s. Provogue India Limited. He was getting Rs. 3,500 per month. In the accident, he also died on the spot. Necessary FIR was lodged in the police station.

18. Mr. Vineet Singh Chauhan, learned Counsel for the 11 claimant-appellant submits that the deceased was earning Rs. 3,500 per month. In addition, he was getting Rs. 50 per day as dearness allowance, which was not taken into consideration while making the computation of the compensation. So, compensation will have to be enhanced.

19. After hearing learned Counsel and by considering the facts and circumstances of the case, it appears that the deceased driver was unmarried. So, the multiplier of 8 was applied by looking the age of the parent. The Tribunal has accepted the salary certificate of Rs. 3,500 per month, which comes to Rs. 42,000 per annum. 1/3rd of Rs. 14,000 was deducted for the self-expenditure. So, the annual income was taken as Rs. 28,000 for the purpose of computation of the compensation. In addition, Rs. 2,000 was also given for the funeral charges. It may be mentioned that Rs. 50 as dearness allowance was given to the deceased as and when he was required in odd hours or out of station, to meet out the food expenses etc. This was not a part of regular salary. The same cannot be considered a part of regular salary. Hence, we are not inclined to interfere in the order passed by the Tribunal, where the total compensation of Rs. 2,26,000 was awarded along with interest @ 6% per annum. The same is hereby upheld being reasonable.

The appeal has no merit and the same is hereby dismissed.

In the result, all the appeals are hereby dismissed.