

(2007) 03 AHC CK 0263

Allahabad High Court

Case No: None

Union of India (UOI)

APPELLANT

Vs

Kusum Rani

RESPONDENT

Date of Decision: March 9, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

Citation: (2007) ACJ 2377

Hon'ble Judges: V.M. Sahai, J; Pankaj Mithal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

V.M. Sahai and Pankaj Mithal, JJ.

The deceased Om Prakash Agarwal was working as teacher in St. John's Intermediate College, Agra. On 22.1.1989 he went to Agra Fort Railway Station, Agra to pick up his scooter from the scooter stand which was near R.M.S. Post Office, when a Matador van No. UHL 9141 on which postal envelopes were being loaded automatically got started and hit the deceased, Om Prakash Agarwal, who was standing near the scooter stand. He was immediately rushed to the hospital where he was declared dead. His widow, mother and daughters filed claim petition claiming compensation to the tune of Rs. 9,00,000 on the ground that the deceased was earning Rs. 2,100 p.m. as salary and Rs. 2,000 p.m. from other sources. His income was Rs. 4,100 p.m. The claim petition was contested by the driver of Matador van. The Union of India did not contest the claim petition in spite of service that was held to be sufficient on Union of India. The Tribunal directed that matter be proceeded exparte against Union of India and by its award dated 13.5.1992 awarded Rs. 4,42,400 as compensation which was payable to the claimant-respondent No. 1, Kusum Rani along with 15 per cent interest.

2. The appellant has filed this appeal challenging the award dated 13.5.1992 of the Tribunal. Mr. Devi Shankar Shukla, Central Government counsel has urged that the award by the Tribunal is ex parte and no notice was served on Senior Superintendent of Post Office, Postal Department, Agra to whom the vehicle belonged nor he was made a party. He further urged that the Postmaster General was also not made party. Due to their non-impleadment no notice could be served on them. The claim petition was bad for non-joinder of necessary parties. The application filed by the Senior Superintendent of Post Office, Postal Department, Agra under Order 9, rule 13, Civil Procedure Code, for setting aside the ex parte award has wrongly been rejected on 29.9.1992 by the Tribunal. He urged that the ex parte award is liable to be set aside. On merits of the award the learned Counsel has urged that quantum of compensation and 15 per cent interest had excessively been awarded which is liable to be set aside. On the other hand, Mr. Ashish Kumar Singh, learned Counsel for the claimant-respondent has supported the award of the Tribunal.

3. From the records, it appears, that the arguments of the learned Counsel for the appellant that Senior Superintendent of Post Office, Postal Department, Agra and Postmaster General, Agra had not been made parties to the claim petition. When they applied for setting aside the ex parte award dated 13.5.1992 the application filed under Order 9, rule 13, Civil Procedure Code, was rejected by order dated 29.9.92. This order dated 29.9.1992 had become final and binding between the parties as it had not been challenged by the appellant in any forum. Even in the present appeal only the award dated 13.5.1992 had been challenged, therefore, it is not open to the counsel for the appellant to challenge the order dated 29.9.1992, in this appeal and to contend that the award is liable to be set aside due to non-impleadment of the aforesaid parties.

4. On merits we have gone through the award of the Tribunal. The Tribunal had recorded a finding of fact that accident took place due to negligence of the driver of Matador van, Nek Ram in which Om Prakash Agarwal died. Claims Tribunal further recorded a finding that the widow, Kusum Rani was the dependant of the deceased and was entitled for compensation. While determining the quantum of compensation the Tribunal had found that deceased was paying income tax on the income of Rs. 4,100. After deducting 1/3rd amount towards personal expenditure of the deceased, dependency was found to be Rs. 2,800 p.m. and yearly dependency was found to be Rs. 33,600. The deceased was a teacher and was of 51 years of age. The retirement of age of teacher was 60 years and he could be in service for 9 years, therefore, the quantum of compensation was worked out to be Rs. 3,02,400. With regard to loss of future earnings the Tribunal has found that a teacher could have earned at least Rs. 1,000 p.m. by tuition. As the life expectancy of the deceased was 70 years, therefore, for a period of 10 years Rs. 1,20,000 was awarded for future income of the deceased after retirement. For the loss of consortium Rs. 10,000 and Rs. 10,000 for mental pain and agony have been awarded. Total compensation

awarded is Rs. 4,42,400. We do not find that the compensation awarded by the Claims Tribunal under any head was unjustified or was excessive.

5. The learned Counsel for the appellant has vehemently urged that 15 per cent interest was excessive and is liable to be reduced. He has placed reliance on the decision of the Apex Court in [Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others](#), and relying on para 23 he vehemently urged that the demand of 12 per cent interest was not accepted by the Apex Court and only 9 per cent interest had been awarded. In our opinion the Apex Court awarded compensation in year 2001 when the rate of interest on fixed deposit was 9 per cent. Therefore, the Apex Court awarded 9 per cent per annum interest. But this decision is of no help to the appellant because in this claim award was given in 1992 when interest rate was about 15 per cent per annum. Therefore, we do not find any illegality in awarding interest at the rate of 15 per cent by the Tribunal.

6. For the aforesaid reasons we do not find any merits in the appeal. The appeal fails and is accordingly dismissed.

7. Parties shall bear their own costs.