Sudama Devi Vs Karim Ullah

Court: Allahabad High Court

Date of Decision: May 8, 2013

Citation: (2013) 4 AWC 4319

Hon'ble Judges: Rajiv Sharma, J; Arvind Kumar Tripathi, J

Bench: Division Bench

Advocate: Shobha Nath Pandey, for the Appellant; Ajay Kumar Singh, for the Respondent

Judgement

Rajiv Sharma and Arvind Kumar Tripathi (II), JJ.
This F.A.F.O. has been filed against judgment and order dated 23rd May, 2011 passed

by Additional District Judge Court No. 9, Motor Accident Claims Tribunal, Faizabad for enhancement of award granted in Motor Accident Claim

Case No. 78 of 2010 by which a sum of Rs. 4,57,520 has been awarded. A claim petition was filed by Sudama Devi and others claiming that

Amar Bahadur Singh was going to his duty of security at Ram Janambhoomi and when he reached Faizabad-Raebareilly Road in the night of 21st

February, 2010 at about 1:30 a.m., a vehicle No. U.P. 40 2T 4358 being driven rashly and negligently by its driver crushed him due to which he

received serious injuries. He was rushed to the District Hospital, Faizabad. On the way he succumbed to the injuries. A first information report was

lodged in local Police Station, Kumarganj same-day which was registered as crime number 108 of 2010 under Sections 279, 337 and 338, I.P.C.

At the time of death deceased was employed as a Constable in Police Department and was earning Rs. 20,000 per month and his age was 40

years.

2. Karimullah, the owner of the vehicle has filed his written statement denying the accident and asserted that the driver and the vehicle was insured

by the O.P. No. 3 the insurance company and the insurance was valid from 18th of February, 2010 to 17th of February, 2011.

3. O.P. No. 2 by filing his written statement denied the accident but has asserted that he was having valid and effective driving licence which was

valid till 27th of July, 2012.

4. The insurance company by filing the written statement denied the allegations of the claim petition and stated that no cause of action has arisen

thus the petition is liable to be dismissed. It was also asserted that the vehicle driver was not having proper and effective driving licence at the time

of accident which took place due to sole negligence of the deceased. Claimant has to prove that the incident took place due to negligence of the

vehicle driver.

5. The Tribunal below after going through the pleadings of the parties framed following issues--

1. Whether in the night of 21st of February, 2010 at about 1:30 a.m. husband of the claimant Amar Bahadur Yadav was hit by vehicle number

U.P. 42 T 4358 which was being driven by its driver rashly and negligently on Faizabad - Rae Bareilly Road and he succumbed to injuries while

on the way to the hospital?

2. Whether the vehicle was insured with O.P. No. 3 the insurance company at the time of accident and the insurance was valid and effective, if so

its effect?

3. Whether the vehicle driver was having valid and effective driving licence at the time of accident?

4. Whether the claimant are entitled to get any compensation? If so from whom and how much?

5. Whether the claimant is entitled for any other relief?

6. In order to prove the claim, appellant No. 1 Sudama Devi has examined herself and Achchey Lal Yadav. The opposite parties have examined

Karimullah as C.P.W. 1. Apart from the first Information report, post-mortem report and inquest report was filed from the side of appellants.

Certain other papers were filed which shall be discussed later on, if necessary. Opposite party has also filed four papers which will be discussed

later, if necessary. After going through the record and evidence the Tribunal below has awarded a sum of Rs. 4.57,520. Finding it inadequate, the

present F.A.F.O. has been filed for enhancement of the award.

7. It was argued from the side of appellants that sufficient evidence was provided regarding salary of deceased but Tribunal below has committed

manifest error of law by making notional income into consideration. It was also argued that Tribunal has erred in deducting pension for calculating

the compensation. On the other hand, learned counsel for insurance company has argued that Tribunal has correctly calculated the amount

according to the salary slip of the deceased and has rightly deducted the pension.

8. Heard the respective submissions of the parties and we have gone through the record.

9. A perusal of the award shows that the Tribunal has decided issues number 1, 2, 3 in favour of the claimants and no cross-appeal has been filed

from the side of insurance company hence, we are concentrating ourselves only to the amount, which ought to have been awarded.

10. A perusal of the award reveals that according to pay slip issued by the Department, deceased''s salary was Rs. 14,323 per month. His date of

birth according to his service book was 1st March, 1967 as such at the time of accident he was more than 43 years. In view of this Tribunal has

applied the multiplier of 15. The Tribunal has held that the annual income of the deceased was at the time of accident Rs. 1,71,912 per annum. The

Tribunal has thus deducted one third from this amount for his personal expenses and has calculated that the annual dependency should have been

Rs. 1,14,608 per annum.

11. The Tribunal, afterward, has deducted the pension which the claimant was getting after the death of her husband. The Tribunal has erred in

deducting the pension of claimant No. 1. As per law only such amount shall be deducted which the wife would have received on account of death

of her husband. Pension is a benefit which wife was entitled even if the husband would had died after his retirement. Our view is fortified by the

Apex Court decision in the case of N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, and in the

case of Bhagat Singh and Sohan Singh Vs. Om Sharma and Others, , the Apex Court has held that:

For the aforesaid discussion, it clearly emerges that the intrinsic nature of benefits like the provident fund, family pension or gratuity is that they are

the deferred fruits of satisfactory service, industry, thrift, contributions and foresight of the employee. Equally, these may be the necessary incidents

of statutory service rules, employment contracts, or beneficent legislation rooted in the employment of the deceased. To attribute these payments

entirely to the fortuitous circumstance of the accident and the resultant death appears to me as untenable. It is more than plain that if the deceased

happened to be a person who was not in the employment at all or one who had neither made nay contribution to any provident fund nor rendered

qualifying satisfactory service entitling him to gratuity or made any payments for a family pension, then none of these benefits would arise to his

dependants despite his death. It is indeed the aforesaid preconditions which are the true fountain head for these benefits and not ipso facto the

incidence of the accident and the consequent death. Herein what deserves highlighting is the sharp distinction (which sometimes has unfortunately

gone un-noticed) between benefits arising on account of death alone and those that are merely deferred earnings payable on superannuation or the

death of the employee, I am clearly of the view that provident fund, family pension or gratuity fall clearly in the latter class.

12. In the case of Smt. Radha Agarwal and Another Vs. State of Uttar Pradesh and Another, , a Division Bench of this Court has held that:

Learned counsel urged that the Tribunal committed error in deducting family pension and the amount of insurance policy and gratuity. We agree

with the contention of the counsel for the claimants. The family pension awarded to the claimants could not be deducted from the amount of

compensation as the pecuniary benefits would have been earned by the deceased if he had remained alive. It is not permissible to deduct the

amount of insurance policy, gratuity of provident fund as held by a Division Bench of this Court in Smt. Kaushalya Devi v. Housing and

Development Board, F.A.F.O. No. 297 of 1975, decided on 15.7.1981. Even though we disagree with the view taken by the Tribunal we do not

consider it proper or necessary to disturb the amount awarded represents a reasonable figure of compensation as discussed earlier.

13. In view of the above, the Tribunal has wrongly deducted pension from the dependency and we are of the view that for calculation of

compensation, pension shall not be excluded.

14. In the case of Reshma Kumari and others v. Madan Mohan and others (supra) relying upon the case of Sarla Verma (supra) it has been held

by Apex Court that:

We, therefore, hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma

Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced

by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years,

and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for

61 to 65 years and M-5 for 66 to 70 years.

15. We have discussed above that the Tribunal has calculated the annual dependency to be of Rs. 1,71,912 (one lac seventy one thousand nine

hundred twelve only). Deducting one third for his personal expenses the total amount comes to Rs. 1,15,181 (one lac fifteen thousand one hundred

eighty one only). As per multiplier decided by Apex Court in Sarla Verma''s case, multiplier of 14 will be applicable in the present case. Thus, the

total compensation comes to Rs. 1,15.181 x 14 = Rs. 16,12,534 (Sixteen lacs twelve thousand five hundred thirty four only). Apart from that Rs.

5,000 is to be added for loss of consortium, Rs. 2,000 for funeral expenses and Rs. 2,500 for loss of estate. Thus, the total amount comes to Rs.

16,22,034 (Sixteen lacs twenty two thousand thirty four only).

16. The claimants are entitled to that amount as compensation. Apart from that appellants are also entitled to 6% simple interest on the aforesaid

amount from the date of filing of the petition till the date of actual payment. The amount already paid (if any) shall be deducted from the above.

17. O.P. No. 3 the insurance company is directed to pay the amount of compensation as decided above within two months from today to the

appellants. The appellants are entitled to the aforesaid amount in the ratio decidendi by the Tribunal. In view of the above discussion, the appeal is

allowed with above modification.