

Smt. Phoolkali And Others vs The New India Assurance Co.Ltd. And ... on 30 April, 2025

Author: Vipin Chandra Dixit

Bench: Vipin Chandra Dixit

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:70611

Court No. - 48

Case :- FIRST APPEAL FROM ORDER No. - 3806 of 2009

Appellant :- Smt. Phoolkali And Others

Respondent :- The New India Assurance Co.Ltd. And Another

Counsel for Appellant :- Mohd. Naushad Siddiqui

Counsel for Respondent :- Ajay Singh, Shравan Kumar Pandey, Shyam Narain Pandey

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Aman Srivastava, learned counsel holding brief of Sri Mohd. Naushad Siddiqui, learned counsel for the appellants, Sri Ajay Singh, learned counsel appearing on behalf of The New India Assurance Company Ltd.-respondent no.1 and Sri S.K.Pandey, learned counsel appearing on behalf of respondent no.2, who is the owner of the offending truck.

This first appeal from order has been filed under Section 173 of Motor Vehicle Act, 1988 on behalf of the claimants-appellants for enhancement of compensation against the judgment and award dated 17.9.2009 passed by Additional District Judge, Court No. 1/Motor Accident Claims Tribunal, Kanpur Nagar in M.A.C.P. No. 748 of 2007 (Smt. Phoolkali and others vs. The New India Assurance Co. Ltd. and another) by which compensation of Rs. 2,85,000/- along-with 6% interest has been awarded to the claimants-appellants on account of death of Rameshwar in a road accident on 11.08.2007.

It is submitted by learned counsel for the appellant that the accident was occurred on account of sole negligence of driver of truck which was insured with respondent no. 1-insurance company and there was no negligence on the part of the deceased. The Claims Tribunal has erred in deciding issue no. 1 holding 75% negligence of truck driver and 25% of the deceased, who was driving his motorcycle at the time of accident. The finding of the Claims Tribunal in respect of contributory negligence of the deceased is perverse and against the evidence and material which are available on record. P.W.-2, who was an eye witness of the accident has fully proved the rash and negligent driving of truck driver. The respondent had not adduced any evidence in rebuttal and even the driver of the truck was not produced by the insurance company. It is further submitted that F.I.R was also lodged against the driver of the truck and Investigating Officer after due investigation had submitted charge-sheet against the truck driver which also proves the rash and negligent driving of the truck driver. The the Claims Tribunal has erred in deducting 1/3rd towards personal expenses of the deceased, ignoring the fact that there are four dependents and deduction would be 1/4th as per judgment of Hon'ble Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported in 2009(2) TAC 677 (S.C.). Lastly, it is submitted that nothing has been awarded towards future prospects and only Rs. 15,000/- has been awarded for non pecuniary damages, where as the claimants-appellants are entitled for 25% future prospects and Rs. 70,000/- for non pecuniary damages in view of law laid down by Hon'ble Apex Court in the case of National Insurance Company Ltd. vs. Pranay Sethi reported in 2017(4) T.A.C. 673.reported in 2009(2) TAC 677 (S.C.). No other ground has been pressed by learned counsel for the appellants.

On the other hand, learned counsel appearing on behalf of respondent-Insurance Company submits that the finding recorded by Claims Tribunal in respect of contributory negligence of the deceased is based on material and evidence which are available on record. It was the case of head on collision between motor-cycle and truck and as per the site plan, the deceased came wrong side and collided with truck. It is further submitted that the age of the deceased was 45 years at the time of accident and the Claims Tribunal has erred in applying the multiplier of 15, whereas the appropriate multiplier would be 14 as per the judgment of Hon'ble Apex Court in the case of Sarla Verma (supra).

Considered the submissions of the learned counsel for the parties and perused the record.

The Claims Tribunal while deciding issue no.1 has recorded the finding of contributory negligence after considering the site plan which shows that the deceased came wrong side and collided with the truck. It is admitted fact that it was head on collision between truck and motorcycle. The finding recorded by the Claims Tribunal is based on evidence and the Claims Tribunal has rightly assessed the negligence of the deceased to the extent of 25% and there is no illegality in any manner. So far as multiplier is concerned the Claims Tribunal had wrongly applied the multiplier of 15 whereas appropriate multiplier would be 14 as per the judgment of of Hon'ble Apex Court in the case of Sarla Verma (supra). The Claims Tribunal has also erred in deducting 1/3rd toward personal expenses of the deceased ignoring the fact that there are 4 dependents and as such deduction would be 1/4th as per the judgment of of Hon'ble Apex Court in the case Sarla Verma(supra). The claimants-appellants are also entitled for 25% future prospects and Rs. 70,000/- for non pecuniary damages. In absence of any evidence in respect of income of the deceased, the Claims Tribunal has rightly accepted

notional income of Rs. 3,000/- per month.

In view of above discussion, the compensation awarded by the Claims Tribunal is reassessed as below:-

1) Monthly income = Rs.3,000/-

2) Annual income = Rs. 3,000/- X 12= Rs.36,000/-

3) Future prospects (25%) = Rs.9,000/-

4) Total annual income = Rs.36,000/- + Rs.9,000/- =Rs.45,000/-

5) Deduction towards personal expenses(1/4th)= Rs. 45,000/ - Rs. 11,250/-= Rs. 33,750/-

6) Multiplier applicable (14) =Rs.33,750/- x 14 = Rs. 4,72,500/-

7)Deduction towards contributory negligence (25%)=Rs.4,72,500/- - Rs1,18,125/-
=Rs.3,54,375/-

8) Non pecuniary damages= Rs. 70,000/-

Total = Rs.3,54,375/- + Rs.70,000/- = Rs.4,24,375/-

The first appeal from order filed by claimants is hereby partly allowed and compensation awarded by the Claims Tribunal is enhanced from Rs.2,85,000/- to Rs.4,24,375/-. The claimants-appellants are also entitled for 6% interest on the enhanced amount from the date of judgment and award of Claims Tribunal i.e. 17.09.2009.

The New India Assurance Company Limited/opposite party is directed to deposit the enhanced amount with interest, within two months from today before the concerned Motor Accident Claims Tribunal. The claimants are entitled to withdraw the entire deposited amount without furnishing any surety.

No order as to costs.

Order Date :- 30.4.2025/PS