

Sanjay vs Ajay Kumar And 2 Others on 2 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:1088

Court No. - 36

Case :- FIRST APPEAL FROM ORDER No. - 805 of 2022

Appellant :- Sanjay

Respondent :- Ajay Kumar And 2 Others

Counsel for Appellant :- Akhilesh Chandra Srivastava,Ramesh Chandra Pathak

Counsel for Respondent :- Pankaj Rai

Hon'ble Kshitij Shailendra,J.

- 1.Heard Shri Aditya Singh Parihar, Advocate holding brief of Shri Ramesh Chandra Pathak, learned counsel for the appellant. No one is present from respondent side though the case has been mentioned as per the notice displayed outside the court.
2. The appeal has been admitted by order dated 21.03.2022 by Division Bench. Requirement of paper book was dispensed with by subsequent order dated 18.05.2022.
3. Lower court record is available with the Court.
4. The instant appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by claimant seeking modification of the impugned award dated 04.08.2018 passed by Motor Accident Claim Tribunal/Ind Additional District/Special Judge (S.C./S.T. Act), Basti in Motor Accident Claim Petition No. 89 of 2016 (Sanjay versus Ajay Kumar and others).

7. Having heard learned counsel for the appellant, this Court finds that there was sufficient documentary and oral evidence to establish that the deceased was appointed as Shiksha Mitra and was absorbed as Assistant Teacher in May 2015 and was receiving salary of Rs. 30,000 per month. The accident took place on 30.08.2015. The lis relating to the nature of appointment and absorption of Shiksha Mitra as Assistant Teacher forming subject matter of proceedings before this Court and up to the Supreme Court, in the opinion of the court, would be read only in relation to the service matter. Further, this Court decided the matter of absorption in 2015 and Supreme Court upheld the decision in 2017, but such an adjudication was not in connection with the entitlement of claimants who are dependents of deceased who was rendering service as Assistant Teacher on the date when the road accident took place.

"4. ?? ????? ?? ???? ?? ???? ?? ????? ?? ?? ???? ??????? ?????? (???)
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 ????? ???? ???? ?????? 25.07.2017 ?? ??????? ?? ???? ???? ???? ???? ????
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31.07.2017 ?? ?????? ?????? ??????"

9. A bare perusal of the afore-quoted clause of the Government Order would reveal that even the Government , after following the decision of the Supreme Court, has held entitlement of Shiksha Mitra to receive salary as Assistant Teacher upto 31.07.2017. Therefore, the decisions rendered by the High Courts and Supreme Court and the Government Order issued thereafter, in no circumstances , can nullify the entitlement of the deceased to receive salary for the post of Assistant Teacher atleast on the date of his death nor is there any direction of any court to take away or recover the amount of salary earned by such Assistant Teacher based upon the previous Government Order.

10. Therefore, this Court is of the view that Tribunal was not justified in assuming the income of deceased as Rs. 3500/- per month taking aid of decisions relating to absorption particularly when there is no dispute that the deceased was receiving a salary of Rs. 30,000/- from the Basic Education Department on the date of accident.

11. Further following the decision of Pranay Sethi (supra), appellants are held entitled to non pecuniary damages to the extent of Rs. 70,000/-.

12. Accordingly, the appeal is allowed.

13. The impugned award is modified in the following terms:-

i. The income of the deceased shall be treated as Rs. 30,000/- per month for the purposes of all computations made in the impugned award.

ii. The non-pecuniary damages are enhanced from Rs. 20,000 to Rs. 70,000/-

14. A copy of this order shall be filed by the appellant before the concerned Tribunal within two weeks.

15. The concerned Tribunal shall register a Misc. Case for the purposes of making re-computation of the compensation in terms of this order with due notice and intimation to the learned counsel representing the respondent no. 3, Insurance Company before the District Court.

16. Such computations shall be positively made within a period of next one month.

17. The amount so re-computed shall be paid by the Insurance Company to the claimants within next two months failing which the award shall be executed and execution proceedings shall be finalized within next one month.

Order Date :- 2.1.2025 SY