U.P. STATE ROAD TRANSPORT CORPORATION A

v.

SHANTI DEVI AND ORS.

(Civil Appeal No. 597 of 2009)

FEBRUARY 3, 2009

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Motor Vehicles Act, 1988 – s.166 – Compensation – Appropriate multiplier – Determination of – Fatal accident of C *person aged 45 years – Survived by wife and 5 children – Annual income assessed as Rs.6000/- – Award of Rs. 90,000/ - applying multiplier of 15 – Enhancement of, to Rs.2,45,000/ - by High Court – On appeal, held: When there is lack of material regarding income of deceased, there should be some* D *amount of guesswork but not totally detached from reality – In the instant case, appropriate multiplier would be 11 and annual income is assessed as Rs.18,000/- – Making 1/3 deduction for personal expenses, Rs.1,32,000/- awarded as compensation with 6% interest from the date of application.* E

Husband of respondent no. 1 and father of respondent no. 2 and 6 died in a motor accident due to rash and negligent driving of the driver. The age of the deceased was 45 years. His income was taken as Rs. 1000/- pm and Rs. 500/- was deducted as personal F **expenses. Rs. 6000/- was assessed as his annual income. The multiplier of 15 was applied and Rs. 90,000/- was awarded as compensation with 6% interest from the date of application. High Court enhanced the income assessed and awarded compensation of Rs. 2,45,000/- by** G **applying the same multiplier of 15. Hence the present appeal.**

Partly allowing the appeal, the Court

H

A **HELD: 1.1 No material was placed regarding the income of the deceased and the multiplier as adopted is high. It is also equally true that delay in filing the cross objections was condoned without justifiable reasons and there is no challenge to the same. In a case where there** B **is lack of material regarding the income of the deceased, some amount of guesswork is there. But the same should not be totally detached from reality. [Para 9] [734-C-D]**

C **1.2. In the instant case, the appropriate multiplier would be 11 and monthly income can be taken at Rs. 1500/-. The annual income can be taken at Rs. 18,000/-. Making one third deduction for personal expenses the balance is Rs. 12,000/- and if multiplier of 11 is adopted the compensation works out to be Rs. 1,32,000/-. The** D **MACT and the High Court have granted 6% interest from the date of application which is in order. [Para 10] [734-E-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 597 E of 2009.

From the Judgment/Order dated 2.3.2007 passed by the High Court of Judicature at Allahabad in FAFO No. 487 of 1991.

F Pradeep Mishra and Daleep Kr. Dhayani for the Appellant.

Anil Kumar Gupta-II for the Respondent.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.**1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court allowing the cross objections filed by the claimants who are respondents herein H while dismissing the appeal filed by the appellant-Corporation.

3. Both the appeal and the cross objections related to an award passed in MACT No. 88/1988 passed by the Motor Accidents Claim Tribunal, Kanpur (in short `MACT'). A Claim Petition was filed under Section 110 of the Motor Vehicles Act, 1939 (in short the `Act'). It was stated in the said petition that one Mahesh Chandra Verma (hereinafter referred to as the `deceased') was the husband of respondent No.1 and the father of respondents 2 to 6 and had lost his life in a vehicular accident.

4. The MACT noted that bus No.U.H.K.883 owned by the appellant-corporation was involved in an accident on 28.4.1988 and the accident took place due to rash and negligent driving of the driver. So far as the income of the deceased is concerned it was taken to be Rs.1,000/- p.m. and out of this Rs.500/- was deducted for personal expenses. In the post mortem report the age of the deceased was stated to be 45 years and therefore taking the annual income of Rs.6,000/- the compensation was assessed at Rs.90,000/- by applying the multiplier of 15 but deduction of 40% was made for lump sum payment. Interest at the rate of 6% p.a. from the date of application was awarded.

5. Questioning correctness of the award, the Corporation filed an appeal and cross objections were filed by the claimants. The High Court found that the income as assessed was low and therefore enhanced the same and fixed the compensation payable at Rs.2,45,000/- with 6% interest. It was held by the High Court that the income of the deceased can be assessed at Rs.2,000/- p.m. and one-third was to be deducted for personal expenses and multiplier of 15 was adopted. Accordingly, the compensation payable was worked out.

6. Stand of the Corporation is that since the deceased claimed to be running a business, the same is presumed to be continuing and there is no loss of income. This plea was turned down by the High Court.

A 7. In support of the appeal, learned counsel for the appellant submitted that the multiplier as adopted is high. The High Court overlooked the fact that the cross objections were filed after about 9 years and there is no basis for taking the income to be Rs.2,000/- p.m.

B 8. Learned counsel for the respondents-claimants on the other hand supported the judgment of the High Court.

9. It was pointed out that the delay in presentation of the cross objections was condoned and the same was not C questioned. It is true, as contended by learned counsel for the appellant, that no material was placed regarding the income of the deceased and the multiplier as adopted is high. It is also equally true that delay in filing the cross objections was condoned without justifiable reasons but condonation order was D passed on 9.1.2006 and there is no challenge to the same. In a case where there is lack of material regarding the income of the deceased, some amount of guesswork is there. But the same should not be totally detached from reality.

10. In the present case the appropriate multiplier would be E 11 and monthly income can be taken at Rs.1500/-. In other words, the annual income can be taken at Rs.18,000/-. Making one third deduction for personal expenses the balance is Rs.12,000/- and if multiplier of 11 is adopted the compensation works out to be Rs.1,32,000/-. The MACT and the High Court F have granted 6% interest from the date of application which is in order. It is stated that certain amounts have been deposited before the MACT and a sum of Rs.50,000/- has been deposited in compliance with the order of this Court dated 17.8.2007. The balance amount shall be deposited with the concerned MACT G within four weeks. The mode of disbursement and amount to be kept in fixed shall be fixed by the MACT keeping in view the interests of the minors.

11. The appeal is allowed to the aforesaid extent.

H N.J. Appeal partly allowed.