

Court No. - 18

Case :- FIRST APPEAL FROM ORDER No. - 551 of 2015

Appellant :- Oriental Insurance Co. Thru. Manager

Respondent :- Harishit Srivastava @ Umang & 2 Ors.

**Counsel for Appellant :- Alok Kumar Singh, Udai Pratap Singh
Kushwah**

**Counsel for Respondent :- Rajesh Kumar Pal, A K
Srivastava, Mukesh Singh**

Hon'ble Attau Rahman Masoodi, J.

Heard Sri Alok Kumar Singh learned counsel for the appellant and Sri Mukesh Singh learned counsel for the respondent nos. 1 and 2-claimants.

Respondent no. 3 is the father of the claimants who was driving the vehicle at the time of accident.

The correctness of the award rendered by the Motor Accident Claims Tribunal, Faizabad in claim petition no. 34 of 2014 has been questioned firstly on the ground that the claim was instituted by the legal heirs of the deceased and both of them at the time of instituting the claim petition were minors. Therefore, in absence of any legal guardian having been appointed by the Court or their representation through a natural guardian otherwise, the claim was not maintainable. The second ground put forth by learned counsel for the

appellant is on the aspect that the occupants in a private car were not covered under the insurance policy. Lastly, it is urged that the future prospect of the income has been taken into account erroneously and contrary to the judgment rendered by the Hon'ble Apex Court in the case of **National Insurance company Limited versus Pranay Sethi and others reported in 2017 Vol. 4 T.A.C.**

Elaborating the submissions putforth, it is argued that in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a boy or an unmarried girl is the father and after him the mother. In the present case, the claim is not instituted through father nor the affidavit filed in support of the claim petition has been sworn by the father. Undisputedly, the mother of the claimants had died in the accident.

Learned counsel for the appellant drawing attention of this Court to Order XXXII Rule 2 C.P.C. has thus submitted that such a claim is bound to be taken off the file with costs to be paid by the pleader or any other person by whom it was presented.

Order XXXII Rule 2 C.P.C. for ready reference is extracted below :-

"2. Where suit is instituted without next friend, plaint to be taken off the file-

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections(if any) may make such order in the matter as it thinks fit

2A. Security to be furnished by next friend when so ordered

(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished."

By virtue of Rule 221 of U.P. Motor Vehicles Rules 1989, Order XXXII is not made applicable insofar as the institution of a claim before the Motor Accident Claims Tribunal is concerned.

Rule 221 of the U.P. Motor Vehicle Rules, 1989 is extracted below :-

"The following provisions of the First Schedule to the Code of Civil Procedure. 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely. Rules 9 to 13 and 15 to 30 of Order V. Order IX, Rules 3 to 10 of Order XIII ; Rules 2 to 21 of Order XVI ; Order XVII ; and Rules 1 to 3 of Order XXIII."

Learned counsel for the respondents-claimants in reply to the arguments put forth has submitted that even if the principle embodied under Order 32 Rule 2 is assumed to apply to the present proceedings, yet no such application was filed within the scope of Order XXXII Rule 2 C.P.C. before the tribunal, therefore, it is not open to the appellant to contend at this stage that the claim instituted by the respondent-claimants was defective in any manner. That apart, it is submitted that the claimants have now become major and the judgment rendered in favour of the minors cannot be faulted with on such a technical ground. Learned counsel for the respondents-claimants has further placed reliance upon Section 158(6) of the Motor Vehicles Act, 1988, according to which, it is the bounden duty of the police authorities to forward necessary details of the accident to the insurer/owner as well as the tribunal. It is thus contended that the compensation arising out of an accident becomes a bounded duty on the

part of the insurer/owner to be discharged towards the dependents of the deceased as a result of death and in the case of injury to the injured. There is no prohibition under Motor Vehicles Act, 1988 not to entertain such a claim by the tribunal in favour of the claimants on account of the fact that such a beneficiary is a minor. It is submitted that every court established by law is the guardian of a minor. Attention of the Court was also drawn to Section 163A of the Motor Vehicles Act, 1988 which mandates the payment of compensation to the legal heirs of a victim or the victim himself to which there is no bar of age.

Record is available in this Court. It is gathered from the record that no application or objection against the maintainability of the claim was filed by the appellant before the tribunal. Therefore, the ground urged before this Court at this stage when the claimants have already attained the age of majority may not lie and may not be tenable in the eye of law. The rectifiable defect with the passage of time has lost its relevance when both the claimants have become major. The position at the time of release of compensation in such matters is, however, liable to be viewed in accordance with law. Moreover, remand of the proceedings would also not

serve any purpose, therefore, looking to the object of law, the objections raised against the maintainability of claim are overruled.

The next ground questioning the correctness of the judgment/award under challenge is on the aspect of coverage of the occupants within the fold of insurance policy. Undisputely, the vehicle in which the deceased was traveling was insured comprehensively. The comprehensive policy as per settled law offers a cover not only to the driver but to the occupants as well. The deceased was an occupant in the private car driven by her husband and would thus stand covered within the scope of the insurance policy.

The issue on the aspect of coverage of occupants in the private car insured comprehensively has been settled in the judgment rendered by Hon'ble the Apex Court in the case of **National Insurance Company Ltd. versus Balakrishnan reported in (2013)1 S.C.C. 731**. The judgment rendered by the apex Court has invariably been followed. Therefore, the submissions putforth by learned counsel for the appellant on the aspect that the deceased was not covered within the fold of the insurance policy appears to be clearly misconceived and deserves to be rejected.

Lastly on the aspect of future prospect, this Court finds that the submission putforth by learned counsel for the appellant does have force in view of the judgment rendered by the apex Court in the case of **National Insurance company Limited versus Pranay Sethi and others**(supra), which has wrongly been applied in the present case. To this extent, the argument putforth by learned counsel for the appellant has substance and deserves acceptance. The future prospect of the income is thus modified and substituted as 30% of the notional income.

In the result, the appeal is partly allowed to the extent that the future prospect of income be taken into account as 30% instead of 50% as allowed by the tribunal. Rest of the grounds are rejected. Ordered accordingly.

The statutory deposit made before this Court is remitted to the tribunal for necessary adjustment towards redemption of the decree. The record be sent back.

Order Date :- 19.2.2020

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