(2007) 11 UK CK 0014

In the Uttarakhand High Court

Firoj Khan APPELLANT

Vs

Phool Singh and Others RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 2669

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Judgement

Rajesh Tandon, J.—Heard Mr. Lokpal Singh, counsel for the appellant and Mr. Pankaj Purohit, counsel for the respondent No. 3.

2. This is the claimant''s appeal seeking enhancement of amount of compensation awarded by the Claims Tribunal.

3. By the present appeal, filed u/s 173 of Motor Vehicles Act, 1988, appellant has prayed for enhancement of the amount of compensation awarded by the judgment and award dated 6.6.2006 passed by Motor Accidents Claims Tribunal, Dehradun in M.A.C.P. No. 185 of 2003.

4. Briefly stated, a Motor Accident Claim Petition No. 185 of 2003 was made for compensation of Rs. 5,00,000 towards compensation on account of injuries sustained by the claimant. According to the claim petition, on 15.6.2003 at about 4.30 p.m. the claimant was going to his home Jamanpur Selakulai from Harbertpur along with Barkat Ali by scooter No. UP 07-J 6444 as pillion rider. As soon as the said scooter reached near Radhapur Bridge, the jeep No. UP 07-F 7244 which was being driven rashly and negligently dashed the scooter as a result of which Barkat Ali and the claimant fell down and sustained grievous injuries. Barkat Ali was taken to Doon Hospital where he succumbed to injuries. The claimant was admitted at C.M.I, where he remained admitted for 17 days. The claimant received injuries on his head and 26 stitches were made on his head. The right shoulder bone of the claimant also got broken in the said

accident. It has been stated that the claimant is not mentally fit and his memory power has weakened. He cannot perform his work with his legs and hands. Claimant was married one month ago from the date of accident and he was aged about 22 years at the time of accident. The claimant was doing the job of mason and was earning a sum of Rs. 5,000 per month. The claimant has become permanently disabled due to the accident and the treatment is still in progress. The claimant has suffered mental and physical agony and has spent a sum of Rs. 1,00,000 for medical treatment. A sum of Rs. 3,00,000 towards physical and mental agony and deprivation of the basic amenities of life has been claimed. Further, the claimant has claimed a sum of Rs. 1,00,000 towards medical treatment and Rs. 1,00,000 towards future medical expenses. Thus, a sum of Rs. 5,00,000 has been claimed.

5. On behalf of the driver and the owner of the offending vehicle, a written statement has been filed stating therein that the scooterist was driving the scooter rashly and negligently. The compensation has been claimed in exaggeration. The vehicle in question is insured with United India Insurance Co. Ltd. and the driver was holding a valid driving licence at the time of accident. The insurance company is liable to indemnify the claim, if any.

6. A written statement has been filed on behalf of United India Insurance Co. Ltd. denying the averments made in the claim petition. The scooterist was responsible for the accident in question. It has also been submitted that the insurance company with which the scooter was insured has not been impleaded as party. Drivers of the alleged vehicles were not having valid driving licence. The insurance company is not liable to indemnify the compensation. The claim petition is liable to be dismissed against the insurance company.

7. On the pleadings of the parties, following issues have been framed:

(Omitted as in vernacular)

8. In support of his claim, the claimant has examined Irshad as PW 1, Bhupendra Singh Kushwaha as PW 2 and Mir Hasan as PW 3. Towards the documentary evidence, the claimant has produced copy of first information report, cash memos with regard to medical expenses and disability certificate.

9. The insurance company in question has examined Sandip Talwar, DW 1 and Anil Kumar Sharma as DW 2. Towards the documentary evidence, copy of disability certificate and investigation report of Raghubir Singh Bedi with regard to the claimant has been produced by the insurance company.

10. On behalf of the owner and the driver of the offending jeep, the insurance certificate and driving licence have been produced.

11. While deciding as to whether the claimant sustained injuries due to collision between the jeep No. UP 07-F 7244 and scooter No. UP 07-J 6444 and further as to whether the accident in question had taken place due to rash and negligent driving by the jeep in question or scooter in question, the Claims Tribunal has

relied upon the statements of Irshad, i.e., PW 1 and Bhupendra Singh as PW 2. These witnesses have deposed that the accident in question had taken place due to rash and negligent driving by the driver of jeep in question. Controverting the statements of these witnesses, no evidence has been adduced on behalf of the defendants. Further, the Claims Tribunal has relied upon the statement of PW 3, i.e., Mir Hasan who has proved that the claimant has become 75 per cent disabled. On the basis of the aforesaid, the Claims Tribunal has recorded the finding that the accident in question had taken place due to rash and negligent driving by the driver of jeep in question.

12. While deciding as to whether claim petition was barred by non-impleadment of the necessary parties, the Claims Tribunal has recorded the finding that since the claimant was pillion rider on the scooter, he cannot get any relief from the owner of the scooter in question or the insurance company with which the said scooter was insured and, as such, there is no adverse impact on the claim petition even if the owner of the scooter in question or the insurance company with which the said scooter was insured, have not been impleaded as parties.

13. While deciding with regard to possession of valid driving licence, the Claims Tribunal has relied upon the driving licence of the jeep driver produced on record and decided the issue against the insurance company in question.

14. While deciding as to whether the claim petition has not been verified in accordance with law, the Claims Tribunal has recorded the finding that the claim petition has been verified by the claimant.

15. While deciding with regard to quantum of compensation, the Claims Tribunal has assessed the income of the claimant to the extent of Rs. 2,700 per month. Further, the age of the claimant was considered to be about 22 years and, therefore, Claims Tribunal has selected the multiplier of 17. The Claims Tribunal has calculated the income of the deceased to the following extent:

Rs. 2,700 x 2/3 x 12 x 17 = Rs. 3,67,200.

16. Further, Claims Tribunal has calculated 75 per cent of the said amount and awarded a sum of Rs. 2,75,400 for physical and mental agony and monetary loss. Further, the Claims Tribunal has awarded a sum of Rs. 27,000 for medical expenses. Thus, a total sum of Rs. 3,02,400 has been awarded towards compensation.

17. Counsel for the appellant has submitted that Claims Tribunal has deducted 1/3rd of the income in injury case which is illegal.

18. On perusal of the judgment and award passed by Claims Tribunal it is evident that the Claims Tribunal has deducted 1/3rd of the income of the deceased. Therefore, income of the deceased is calculated as under:

Rs. 2,700 x 12 x 17 = Rs. 5,50,800.

19. Further, 75 per cent of the above said amount is worked out to the extent of

Rs. 4,13,100 and adding to it the amount of compensation towards medical expenses, the total amount comes to Rs. 4,13,100 + Rs. 27,000 = Rs. 4,40,100. Since the claimant has already been awarded compensation to the extent of Rs. 3,02,400, therefore, the claimant will be entitled to get a sum of Rs. 4,40,100 - Rs. 3,02,400 = Rs. 1,37,700 in addition to the compensation awarded by the Claims Tribunal.

20. Subject to the aforesaid, the appeal partly succeeds and is allowed. No order as to costs.

