
(2019) 10 UK CK 0063

In the Uttarakhand High Court

Case No : Appeal From Order No. 162 Of 2017

H.D.F.C. Ergo General Insurance Company Ltd

APPELLANT

Vs

Anita Devi & Others

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Citation : (2019) 10 UK CK 0063

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sarvesh Aggarwal, Vinodanand Barthwal

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This is an appeal filed by the Insurance Company against the award dated 14.12.2016 passed by the Motor Accident Claims Tribunal, Tehri Garhwal in M.A.C.P. No. 23 of 2015, whereby a compensation of Rs. 4,20,600/-(Rupees Four Lakh Twenty Thousand Six Hundred only) has been awarded to the claimants.

2. Brief facts of the case are that on 13.09.2014 at about 11:20 A.M., a bus bearing registration no. UK-07PC-0702 was carrying a number of passengers from "Devprayag" to "Srinagar". The Bus met with an accident on way, as it was being driven rashly and negligently by its driver. The bus fell into a deep gorge near the place called "Juyalgarh", Tehsil Devprayag, District Tehri Garhwal. In the said accident, at least four passengers died, including Vinod Todariya, whose legal heirs/dependants have subsequently made the present motor accident claim.

3. On account of the death of Vinod Todariya in the accident, a claim petition was filed by the mother and father of the deceased before the Motor Accident Claims Tribunal, Tehri Garhwal for a compensation of Rs. 52,20,000/- (Rupees Fifty Two Lakh Twenty Thousand only). It was stated in the claim petition that the

deceased was 19 years of age at the time of his death and he was earning a sum of Rs. 15,000/- (Rupees Fifteen Thousand only) by giving tuitions.

4. Written statements were filed by the owner of the vehicle and the insurance company. Since, inspite of the notice, the driver of the vehicle did not appear before the Tribunal, matter was proceeded ex parte against him.

5. On the basis of the pleadings of the rival parties, following issues were framed by the learned Tribunal:-

"1. Whether the deceased Vinod Todariya died due to the injuries received in the accident said to have occurred on 13.9.2014 at about 11:20 p.m. at Juyalgarh, Tehsil Devprayag, District Tehri Garhwal, due to the rash and negligent driving of driver of vehicle No. UK07-PC-0702 (Bus)?

2. Whether at the time of accident there were valid papers of vehicle No. UK07-PC-0702 (Bus) such as registration, permit, fitness etc?

3. Whether the driver of the vehicle No. UK07-PC-0702 (Bus) was having a valid driving licence at the time of alleged accident?

4. Whether the petitioners are entitled for compensation, if so, how much and from whom?"

6. While deciding issue no. 1, the learned Tribunal recorded a finding that the accident in question occurred due to rash and negligent driving by the driver of the bus bearing registration No. UK07-PC-0702, and Vinod Todariya died due to the grievous injuries sustained by him in the said accident. This finding of the Tribunal was based on the evidence in the form of PW2 Mukesh Chamoli who has said in his examination-in-chief that on the day of incident he was coming from Devprayag to his house Bhaktiyana Srinagar, when at about 11:15 a.m., the vehicle no. UK07-PC-0702 had overtaken his vehicle. The vehicle which overtook was being driven rashly and negligently. Though this witness is not an eyewitness to the accident, however, from his statement it is clear that on the date of accident the vehicle was being driven rashly and negligently by its driver. Moreover, a similar finding that the vehicle was being driven rashly and negligently has been recorded by the learned Tribunal in two MACP cases arising out of the same accident being MACP No. 03 of 2015 "Beena Devi vs. Ganga Singh & others" and MACP No. 04 of 2015 "Guddi Devi vs. Ganga Singh & others".

7. As far as issue no. 2 is concerned, the learned Tribunal came to the conclusion that the vehicle no. UK07-PC-0702 was having all its valid papers, such as, permit, registration, fitness, etc.

8. While deciding issue no. 3, the learned Tribunal recorded a finding that at the time of the accident the driver of the ill fated vehicle was having a valid and effective driving licence.

9. As regarding quantum, the learned Tribunal determined the notional income of the deceased as Rs. 4,000/-(Rupees Four Thousand only) per month i.e. Rs.

48,000/- (Rupees Forty Eight Thousand only) per annum. Out of this amount, the learned Tribunal deducted one-half towards personal expenses keeping in view that the deceased was a bachelor at the time of his death, and thus calculated the annual dependency income as Rs. 24,000/- (Rupees Twenty Four Thousand only) per annum. Thereafter, the learned Tribunal enhanced the amount to the extent of 20 % towards future prospect and calculated the amount as Rs. 28,800/- (Rupees Twenty Eight Thousand Eight Hundred only). On this, the learned Tribunal applied a multiplier of 12 and calculated the amount as Rs. 3,45,600/- (Rupees Three Lakh Forty Five Thousand Six Hundred only).

10. Apart from this, the learned Tribunal also awarded an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses and Rs. 50,000/- (Rupees Fifty Thousand only) towards loss of love and affection. Thus, the learned Tribunal awarded a total compensation of Rs. 4,20,600/- (Rupees Four Lakh Twenty Thousand Six Hundred only).

11. Aggrieved, by the judgment and award passed by the Motor Accident Claims Tribunal, the insurance company has filed the present appeal.

12. The learned counsel for the appellant submits that as the driver of the vehicle was not having a separate licence for driving the vehicle in hill areas, the liability ought to have been fixed on the driver and the owner of the vehicle. Another ground of challenge in this appeal is that the compensation is on higher side.

13. As far as first argument of the appellant is concerned, it is wholly misconceived, inasmuch as there is no provision under the Motor Vehicles Act, 1988 for having a separate driving licence for driving the vehicle in hill areas.

14. Moreover, as regarding the income of the deceased, no interference is liable to be made, as the learned Tribunal has determined the notional income of the deceased as only Rs. 4,000/- (Rupees Four Thousand only) per month, which is even less than the minimum wages, and further the deceased was 19 years young boy and was augmenting the income of his parents by giving tuitions, etc. Even though it can be reasonably argued that 20% of increase in income for a boy of 19 years of age is on the higher side and this may be correct, yet the determination of notional income itself is on the lower side and hence no interference is liable to be made on the total amount calculated. Consequently, this Court finds no ground for any interference in the award passed by the learned Tribunal.

15. In view thereof, appeal fails and is hereby dismissed.

16. Let the entire amount along with the interest of seven per cent per annum from the date of filing of the claim petition be deposited by the appellant with the concerned Tribunal after adjusting the amount already deposited. After the entire amount is deposited by the appellant, let the same be released in favour of the claimants within three weeks from the date of production of a certified copy of

this order. The statutory amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) be also remitted to the concerned Tribunal.

17. Let a copy of this judgment along with the lower court record be sent to the concerned Tribunal for onward compliance.