(2009) 04 UK CK 0014

In the Uttarakhand High Court

Hemant Kumar Kandpal APPELLANT

Vs

Harishankar and Another RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2009) 04 UK CK 0014

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, 1988, has been filed by appellant- claimant, against the judgment and award dated 04.05.2007 passed by Motor Accident Claims Tribunal/District Judge, Nainital, in M.A.C.P. No. 26/2006, Hemant Kumar Kandpal v. Harishankar and Anr., whereby Tribunal partly allowed the claim petition and awarded a sum of Rs. 1,00,000/- as compensation with interest @ 6% per annum.

2. Briefly stated the facts as narrated in the claim petition are that on 23.12.1996 at 3.30 p.m. claimant-Hemant Kumar Kandpal along with his colleague was coming from Kusumkheda to Haldwani and when he reached in front of Abdulla Petrol Pump, Kusumkheda, a Vikram Tempo No. U.P.02C-3302 which was coming on its wrong side, hit the claimant from the rear side, due to which claimant sustained grievous injuries and he was immediately admitted in Soban Singh Jeena Hospital, Haldwani. The leg of claimant was fractured and on account of the same he became disabled. At the time of accident claimant was 30 years of age and he was working on the post of Assistant Manager in Nagpal Hotel, Mangal Parao and he used to earn a sum of Rs. 4800/- per month from the said job. The claimant alleged that a sum of Rs. 1,50,000/- has been expended on treatment of injuries sustained by him in the accident. The claimant remained admitted in hospitals from 23.12.1996 to 17.1.1997. The claimant claimed a sum of Rs. 7,00,000/- as compensation in lieu of injuries sustained by

him in the accident, against the opposite parties.

3. Opposite party No. 1-Harishankar, owner of vehicle No. U.P.02C/3302, filed his written statement denying the contents of the claim petition and stated that insurer as well as owner of motorcycle, to which claimant has narrated in the claim petition, has not been made party in the claim petition. It has also been stated that at the time of accident his vehicle was being plied by an expert driver, who was having valid and effective driving licence. The accident was caused on account of negligence of motorcyclist. The vehicle of answering respondent was insured with opposite party No. 2- insurance company on the date of accident and therefore the liability to pay the compensation, if any, is of insurance company. It has further been stated that claimant was got treated by answering respondent, which bills answering respondent was having with him.

4. Opposite party No. 2-United India Insurance Co. Ltd., insurer of vehicle No. U.P.02C/3302, filed its written statement denying the contents of the claim petition and stated that accident was caused on account of negligence of motorcyclist and owner and insurer of motorcycle have not been made party in the claim petition. The alleged accident was taken place before nine years back and now this claim petition has been filed in a forged manner. The claimant has involved the tempo in question in the accident only just to get the compensation. The answering respondent reserves the rights u/s 170 of Motor Vehicles Act to contest the claim on all grounds. The claim petition filed by the claimant against the answering respondent is liable to be dismissed.

5. The learned Tribunal on the basis of pleadings of the parties framed relevant issues in the claim petition. Parties led evidence in support of their case. The learned Tribunal after having considered the entire material evidence available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 1,00,000/- along with interest @ 6% per annum, against opposite party No. 2-United India Insurance Co. Ltd., vide impugned judgment and award dated 04.05.2007.

6. Feeling aggrieved by the aforesaid impugned judgment and award, the appellant-claimant has preferred the present appeal before this Court for enhancement of amount of compensation.

7. Heard Sri Z.U. Siddiqui, learned Counsel for appellant-claimant, Sri Dinesh Chauhan, learned counsel for respondent No. 1, Sri Naresh Pant, learned Counsel for respondent No. 2 and perused the record.

8. Learned Counsel for the appellant-claimant has confined his argument to this aspect that amount of compensation as well as interest awarded by the learned Tribunal is meager and same is liable to be enhanced by this Court.

9. On the other hand, learned Counsel for the respondents have supported the impugned award and submitted that compensation awarded by the learned Tribunal is just and proper.

10. As far as factum of accident is concerned, the Tribunal has dealt with this point while deciding issue No. 1 in the impugned judgment and award. The learned Tribunal after having considered the entire evidence adduced before it came to the conclusion that on 23.12.1996 at 3.30 p.m. when claimant-Hemant Kumar Kandpal was coming from Kusumkheda to Haldwani, near Abdulla Petrol Pump, Kusumkheda, a Vikram Tempo No. U.P.02C- 3302 which was coming on its wrong side, hit the claimant from the rear side, due to which claimant sustained grievous injuries. I do not find any illegality in the said finding recorded by the Tribunal and same deserves to be confirmed.

11. The Tribunal further held that at the time of accident all the papers of vehicle in question were valid and it was insured with opposite party No. 2- United India Insurance Co. Ltd., therefore, liability to pay the compensation is of insurance company. I do not find any illegality in the said finding recorded by the Tribunal and same deserves to be confirmed.

12. As far as amount of compensation to be paid to the claimant is concerned, the Tribunal has dealt with this point while deciding issue No. 3 in the impugned judgment and award. The record reveals that claimant-Hemant Kumar Kandpal has examined himself as PW-1. This witness stated in his deposition that he proved the medical bills, medical certificate which have been filed on record by way of evidence adduced by him. PW-2 Govind Prasad, Pharmacist stated in his deposition that claimant remained admitted in Soban Singh Jeena Hospital, Haldwani w.e.f. 23.12.96 to 19.1.97. The claimant also filed his disability certificate (paper No. 21C/2), which shows that claimant suffered disability upto an extent of 40%. On the other hand, the insurance company has taken the plea that this disability certificate is of the year 15.10.2006, whereas accident in this case took place on 23.12.1996. The insurance company also pleaded that disability certificate has been got made after a lapse of 9-10 years and hence it is not proved that this disability certificate has been got prepared with respect to same injuries sustained by the claimant in the accident which occurred on 23.12.1996. Thus, the Tribunal has accepted the contention in this regard raised by learned Counsel for insurance company.

13. As far as income of claimant is concerned, learned Counsel for claimant has pleaded before the Tribunal that claimant had no knowledge about the disability certificate. The claim petition shows that claimant was 30 years of age at the time of accident. The claimant did not adduce any evidence with regard to his income. If the Tribunal in absence of any cogent evidence with regard to income of claimant take into account the notional income of claimant as Rs. 15,000/- per annum and after deducting one-third out of said amount, financial dependency of claimant comes to Rs. 10,000/- per annum. The Tribunal selected the multiplier of ''17'' as per schedule given in Motor Vehicles Act at the age group of 30-35 years and by multiplying the said amount from the multiplier of ''17'' this amount comes to Rs. 1,70,000/- and 40% of the said amount comes to Rs. 68,000/-. If the notional income of claimant is taken into account as Rs. 36000/- per annum

and after deduction of one- third, financial dependency of claimant comes to Rs. 24000/- per annum and multiplication by ''17'' this amount comes to Rs. 4,80,000/- and 40% of the said amount comes to Rs. 1,92,000/-. At the same time, learned Tribunal took the note of this fact that disability certificate has been got made after 9-10 years and held that this fact goes against the claimant and in favour of insurance company. The Tribunal further recorded a finding that the bills which have been produced on record are nominal, but at the same time held that claimant must have invested some amount on his treatment and he must also suffered mental and physical agony and must have suffered economic loss. The learned Tribunal keeping in view the facts and circumstances of the case awarded a total sum of Rs. 1,00,000/- in lump sum to the claimant on the basis of guess work. As far as rate of interest awarded by the Tribunal is concerned, the same also appears to be justified and needs no interference. I do not find any illegality in the said finding recorded by the Tribunal and same deserves to be confirmed.

14. In view of the above, appeal lacks merit and is liable to be dismissed.

15. Accordingly, appeal is dismissed. The impugned judgment and award dated 04.05.2007 is hereby confirmed.