(2019) 07 UK CK 0131

In the Uttarakhand High Court

Case No : Appeal From Order No. 346, 210 Of 2017

Manju Devi & Another — APPELLANT

Vs

Ayub Khan & Others — RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 07 UK CK 0131

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Mamta Bisht, Prabhat Pande

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. Delay in filing the appeal on behalf of the claimants is condoned. Delay Condonation application (CLMA No. 6800 of 2017) is allowed.

2. Both these two appeals arise out of a common award dated 27.01.2017 passed by the Motor Accident Claims Tribunal/District Judge, Haridwar in MACP No.21 of 2014 "Smt. Manju Devi & another Vs. Sri Ayub Khan & others", whereby an amount of Rs.58,39,000/- (Rupees Fifty Eight Lakh Thirty Nine Thousand Only) has been awarded as compensation to the claimants. Hence, they have been clubbed together.

3. Whereas Appeal from Order No.346 of 2017 has been filed by the claimants to enhance the compensation awarded by the learned Tribunal and Appeal from Order No.210 2017 has been preferred by Shriram General Insurance Co. Ltd., against the award dated 27.01.2017, whereby the learned Tribunal has directed the Insurance Company to pay an amount of Rs.58,39,000/-(Rupees Fifty Eight Lakh Thirty Nine Thousand Only) to the claimants.

4. Brief facts of the case are that a claim petition was filed by the old parents i.e.

mother and father of the deceased, namely, Nitesh Kumar Singh who died in an accident on 10.10.2013, which occurred at 11:30 PM. On 10.10.2013 at about 11:30 PM when the deceased was going on his motorcycle from his office Honda Cars India Limited, situated at S.P.L.-1 Tapukara Industrial Area, Khushkera, District Alwar, Rajasthan. He met with an accident as it collided with a truck, which was parked in the middle of the road in Alwar, Rajasthan. The cause of action for filing of the claim petition arose under Section 166 of the Motor Vehicles Act, 1988, at Alwar, however, since the claimants resided in District Haridwar, the claim petition was filed before the Motor Accident Claims Tribunal, Haridwar.

5. The Insurance Company filed its written submission denying the averments of the claim petition. Since the driver and the owner of the vehicle did not appear before the Tribunal, an ex-parte order was passed by the learned Tribunal against them.

6. On the basis of the pleadings, the learned Tribunal framed the following issues:-

"1. Whether on 10.10.2013 at about 11:30 PM near Village Banveerpur mod, P.S. Khushkheda, District Alwar, Rajasthan when the son of claimant no.1 Smt. Manju was going on his motorcycle HR26 CA 5687 from his office Honda Cars India Limited situated at S.P.L -1 Tapukara Industrial Area Khushkheda, District Alwar, Rajasthan then the driver of vehicle truck no. RZ02 GA 0894, respondent no.1 Ayub Khan had parked the said truck in the middle of the road without indicator or parking light, due to which Nitesh Kumar S/o claimant no.1 sustained grievous injuries and due to the said injuries, he died on the spot?

2. Whether the vehicle truck no. RZ02 GA 0894 was insured with respondent no.3 Shriram General Insurance Company Limited and at the time of incident the insurance policy of the said vehicle was valid and effective? If yes then its effect?

3. Whether the driver of vehicle truck no. RZ02 GA 0894 respondent no.1 was having valid and effective driving licence at the time of incident? If yes then its effect?

4. Whether the driver of vehicle truck no. RZ02 GA 0894 respondent no.1 was having the valid and effective registration certificate, permit and fitness of the said vehicle at the time of the incident?

5. Whether the accident in question has occurred due to negligent driving by Nitesh Kumar, driver of the motorcycle no. HR26 CA 5687?

6. Whether the applicants are entitled for the relief sought, if yes then from which of the parties and to what extent?

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5. Whether the accident in question has occurred due to negligent driving by Nitesh Kumar, driver of the motorcycle no. HR26 CA 5687?

6. Whether the applicants are entitled for the relief sought, if yes then from which of the parties and to what extent?

7. As regarding the issue no.1 which is for the establishment of the factum of accident, there is a clear cut finding of the learned Tribunal based on the evidence that the motorcycle which the deceased was driving collided with the truck which was parked in the middle of the road without its parking light on. It has also come in the findings that there was no fault of the driver of the motorcycle i.e. Nitesh Kumar Singh deceased, but of the truck owner/driver.

8. Regarding issue nos.2, 3 and 4, there has been a categorical finding of the learned Tribunal that the truck which was involved in the accident was insured with the Insurance Company i.e. Shriram General Insurance Co. Ltd., and the truck and the driver of the truck had a valid licence and all the relevant papers.

9. Regarding issue no.5 there has been a categorical finding of the Tribunal that the accident was not occurred due to the fault of the deceased but due to the fact that the truck was unauthorizedly parked in the middle of the road, that too without its parking light on. There was no fault of the driver.

10. While determining the compensation, the learned Tribunal has recorded the finding that the deceased at the time of his death was 26 years of age, who was working in Honda Cars India Limited at Alwar, Rajasthan and drawing a monthly salary of Rs.38,329/-(Rupees Thirty Eight Thousand Three Hundred Twenty Nine Only) which was proved from the record. The salary of the deceased for the sake of convenience was fixed as Rs.38,000/- (Rupees Thirty Eight Thousand Only). Considering that the deceased was a bachelor and he would have spent half of the amount on himself and half of the amount on his parents, after deducting

one-half of his total income, a monthly income of Rs.19,000/- (Rupees Nineteen Thousand Only) i.e. Rs.2,28,000/- (Rupees Two Lakh Twenty Eight Thousand Only) per annum was determined by the Tribunal for compensation. A multiplier of 17 has been used for calculating the compensation which seems to be in accordance with the table as set up by the Hon'ble Apex Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121. Thus the amount of compensation came to Rs.38,76,000/- (Rupees Thirty Eight Lakh Seventy Six Thousand Only).

11. As regarding the future prospects, the learned Tribunal also fixed a monthly income of Rs.9,500/- (Rupees Nine Thousand Five Hundred Only), i.e. Rs.1,14,000/-(Rupees One Lakh Fourteen Thousand Only) per annum, on which again a multiplier of 17 has been used which comes to Rs.19,38,000/- (Rupees Nineteen Lakh Thirty Eight Thousand Only).

12. The learned Tribunal further awarded a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) towards funeral expenses. Therefore the total compensation awarded by the Tribunal under various heads is as under:-

1 Towards loss of annual income - Rs.38,76,000/-

19,000 X 12 X 17

2 Towards future prospects - Rs.19,38,000/-

9,500 X 12 X 17

3 Towards funeral expenses - Rs.25,000/-

Total Rs.58,39,000/-

13. Thus a total compensation of Rs.58,39,000/-(Rupees Fifty Eight Lakh Thirty Nine Thousand Only) was awarded by the Tribunal along with 6 percent interest per annum from the date of claim petition.

14. The Insurance Company i.e. Shriram General Insurance Co. Ltd. has challenged both the legality of the award and the quantum of the award.

15. The claimants in their appeal have challenged the quantum of the award and have primarily argued that the multiplier of 17 has wrongly been fixed by the Tribunal and it should be 18 and the interest which has been given is also low. Learned counsel for the claimants would also argue that no amount has been given towards loss of consortium and the amount awarded towards funeral expenses is also on the lower side.

16. As far as the appeal of the Insurance Company i.e. Shriram General Insurance Co. Ltd. is concerned, I find no merit in their appeal inasmuch as there was no fault of the driver and the entire liability has to be fixed on the Insurance Company as it is.

17. As far as the appeal of the claimants being AO No.346 of 2017 which is for

enhancement of the compensation is concerned, no interference is liable to be made on the application of the multiplier of 17 as it seems to be correct. However, under the circumstances of the case, the compensation towards funeral expenses is enhanced from Rs.25,000/- (Rupees Twenty Five Thousand Only) to Rs.50,000/- (Rupees Fifty Thousand Only) and this Court further directs that the claimants are also liable to get a sum of Rs.1,00,000/- (Rupees One Lakh only) for loss of consortium.

18. In view of this Court, under the circumstances of the case, interest of 9 percent would meet the ends of justice. The interest has to be calculated from the date of the filing of the petition.

19. Both the appeals stand disposed with the direction to the Motor Accident Claims Tribunal, Haridwar to recalculate the award in terms of the findings of this Court. The entire amount shall be deposited by the Shriram General Insurance Co. Ltd., within a period of six weeks from the date of production of a certified copy of this order, which shall be given to the claimants forthwith.

20. Let the statutory amount of Rs.25,000/-(Rupees Twenty Five Thousand Only) deposited by the appellants be also remitted to the concerned Tribunal.