
(2007) 05 UK CK 0047

In the Uttarakhand High Court

Case No : Appeal from Order No. 74 of 2004

Mr. Darshan Pal Singh

APPELLANT

Vs

Motor Accident Claims Tribunal/Addl. District Judge, F.T.C. 7
and Others

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2007) 05 UK CK 0047

Hon'ble Judges : M.M.Ghildiyal, J;B.C.Kandpal, J

Bench : Division Bench

Advocate : L.K. Tiwari, for the Appellant; D.S. Patni, for the Respondent

Final Decision : Dismissed

Judgement

1. This Appeal, u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the Claimant /Appellant for enhancement of amount of compensation against the judgment and award dated 24-11-2003 passed by MACT/Additional District Judge VII FTC, Dehradun in MACP No. 72 of 2002 whereby the claim petition was allowed against the Respondent No. 4 i.e. National Insurance Company and claimant / Appellant was awarded Rs. 1,75,000/- as compensation, which was liable to be paid by the National Insurance Company / Respondent No. 4 within a period of sixty days, failing which the Insurance Company shall also be liable to pay interest @ 8% per annum.

2. Brief facts, giving rise to this appeal, are that on 15-10-2001, at about 7 p.m. claimant/Appellant along with his wife was coming from Bazar towards his home, 25/8, E.C. Road, Dehradun. When they reached at Rawal Nursing Home, E.C. Road, Dehradun, Maruti Car Number DL 4 CC 7136, which was being driven by Respondent No. 2 rashly and negligently, came from Survey Chowk and dashed the Scooter on its wrong side. Claimant / Appellant and his wife got serious injuries in the accident.

3. His son Sukhbir Singh, who was also coming behind them on motorcycle with his cousin - Joginder Pal Singh, saw this accident and got admitted his parents in CMI Hospital. He handed over the driver of the offending Maruti Car in Police custody and lodged FIR.

4. In the hospital, claimant / Appellant was medically treated by Dr. Harsh Johri (Orthopaedic). The claimant / Appellant took treatment in the CMI Hospital for 26 days and thereafter, he was shifted to Holy Family Hospital, Delhi for better treatment where he was admitted with effect from 14-02-2002 to 20-02-2002. Claimant/Appellant has spent Rs. 2,00,000/- on medical treatment.

5. The claimant / Appellant became permanent handicapped and lost his income. According to claimant / Appellant his monthly income was Rs. 4000/-. He is Ayurvedic Physician and on account of his permanent disability, he is unable to perform his routine work. He is suffering mental agony and became handicapped on account of the injuries received in the accident. The claimant / Appellant claimed Rs. 19,58,000/- as compensation.

6. Only the Respondent No. 2, owner of Maruti Car DL 4 CC 7136 and Respondent No. 4 - the Insurance Company have contested the claim petition by filing its separate written statements. Respondent No. 1 denied the allegations of the petition for want of knowledge. He conceded that he is the registered owner of the said offending Maruti Car which was insured with National Insurance Company at the time of accident. He declined whether the accident occurred by his Maruti Car, because when he was coming with his car, he saw Scooter No. DEQ 233 already fallen at Rawal Nurshing Home. He has been falsely implicated in this case. It has further been alleged that if any liability of payment of compensation is fasten, it shall be paid by the National Insurance Company with whom the Car was insured.

7. The National Insurance Company, with whom the said Maruti Car was insured, has contested the claim petition and denied the averments made in the claim petition for want of knowledge. It was further stated that the said accident was occurred due to rash and negligent driving of the claimant / Appellant. The Insurance Company with whom the Scooter was insured is a necessary party. Insurance company has denied this fact that the claimant / Appellant has spent Rs. 2,00,000/-.

8. In the claim petition, Respondent No. 3 did not turn up despite service, he did not file any written statement, therefore, the case was proceeded ex parte against him.

9. On the basis of pleadings of parties the learned Tribunal, after framing necessary issues, recorded evidence of the parties and after hearing them, allowed the claim petition accordingly.

10. We have heard learned Counsel for the parties and perused the record.

11. The claimant / Appellant has produced 6 witnesses in oral evidence. He has

also produced medical bills, and other papers relating to treatment, other concerned documentary evidence and handicapped certificate. Respondents have not produced any evidence documentary or oral. PW2 (Darshan Pal Singh) and PW 3 (Prabhjot Kaur) are the victims of this accident. They had received grievous injury in this accident. Besides it, PW1 (Jogindra Pal Singh) is the independent eye witness. He has supported the version made in the claim petition. He has categorically stated that on the date of accident he was coming towards Dwarka Store; his uncle and aunt i.e. the victims were coming in a Scooter. When they reached at Rawal Nursing Home, suddenly Maruti Car No. DL 4 CC 7 163, which was being driven, rashly and negligently, came from front side, dashed the scooter at its wrong side due to which his aunt and uncle fell down and they received grievous injuries. This witness caught hold the erred driver and handed over in police custody. He also lodged FIR. PW4 (Sukhbir Singh), is also an eyewitness of this accident, who was also coming behind the victims, who reiterated the version of PW 1. The victims have produced their own testimony as PW 2 & PW 3 before the Trial Court. The witnesses have no inimical terms with the Driver of the Maruti Car or its owner. They have no occasion to give false evidence. No question was put to the witnesses in the cross examination that what was the occasion to give false evidence.

12. On account of the fatal injuries the claimant remained admitted for 26 days. His wife was also treated in the CMI Hospital by Dr. Harsh Johari. PW 5 (Jagmohan Sethi) an eye witness of the incident, has also proved the incident which occur on 15-10-2001 at 7.00 p.m. This witness was standing in front of his office when this accident was occurred. He also stated that the Driver of the offending Maruti Car in its rash and negligent manner dashed the scooter on its wrong side, resulting the said accident.

13 All the witnesses have proved rash and negligence driving on the part of driver of Maruti Car. After the accident took place PW1 Joginder Pal handed over the driver of offending Maruti Car in police custody. FIR, copy of which is annexed as 58A, was lodged at Police Station - Dalanwala, u/s 279, 338 IPC which also indicate and proves the accident on the date, time and place.

14. Although the Respondents have denied the factum of the accident and manner, in which took place but he did not produce any eyewitness in support of his version made in the written statement. The Insurance Company had also alleged negligence on the part of driver of the scooter itself but had not produced any reliable evidence in this regard.

15. Accordingly, the learned Tribunal has rightly held that the accident in which claimant / Appellant got injured was occurred due to rash and negligent driving on the part of its driver, which warrant no interference by this Court.

16. In regard to issue Nos. 2 and 3, the parties have not pressed these issues as Respondent No. 1 has conceded that he is the registered owner of the offending car. Similarly, in para 44 of the written statement, he stated that the driver had

valid driving license, which was valid from 03-12-1996 to 02-12-2016, which requires no comments.

17. Now, only remains the question of quantum of compensation, which has been awarded by learned Tribunal in favour of the claimant / Appellant. The learned Tribunal has adopted the aspect of permanent disability, age, loss of assets and expenses on treatment besides it he has adopted physical pain and mental agony suffered by the Claimant in assessing the compensation and has relied upon in the decision of Apex Court in State of Haryana v. Jasbir Kaur and Ors. reported in 2003 (10) SBR 126.

18. Although the claimant / Appellant has stated that, his income was Rs. 4000/- per month. No documentary evidence has been adduced by which income of the claimant could be assessed. In absence of any documentary evidence, the Tribunal has rightly held that the monthly income of the claimant / Appellant is Rs. 3000/- per month.

19. Before the Tribunal the claimant has claimed himself as Ayurvedic Physician but could not show any certificate in this regard, which can easily prove the profession as well as age of the Applicant. In absence of any certificate, the Tribunal has assessed the age of claimant in between 55-60 age group, which warrants no interference by this Court. In the disability certificate, his permanent disability was assessed as 30%. And accordingly, in such age group the multiplier of 8 was adopted for calculation of pecuniary loss, which comes to Rs. 89,600/-. The Tribunal by rounding of the amount of pecuniary loss has awarded Rs. 90,000/-. The Tribunal, besides it, found entitled him to received Rs. 80,000/- in respect of treatment for which claimant has produced bills and receipts of concerned hospital. Rs. 5000/-for physical pain and nourishment, which in our opinion is quite just and reasonable.

20. Thus, in all Rs. 1,75,000/- has been awarded as compensation for the different accounts as narrated above. The findings recorded by the Tribunal are based on the evidence produced on record and we find no reason to interfere with the same. There is no illegality or perversity in the impugned order.

21. For the reasons recorded above, appeal lacks merit and is liable to be dismissed.

22. Accordingly, the appeal is dismissed. The impugned judgment and awarded dated 24-11 -2003 is affirmed. No order as to costs.