(2008) 06 UK CK 0033

In the Uttarakhand High Court

Narendar Bhardwaj APPELLANT

Vs

The New India Assurance Company and Another RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 06 UK CK 0033

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

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 6-9-2006, passed by Motor Accident Claim Tribunal/Addl. District Judge/ I F.T.C., Roorkee, District Haridwar, in MACT No. 73 of 2004.

2. The facts, in short, giving rise to this appeal, are that on 26-4-2004 the claimant Narendra Bhardwaj was going to his home Lalkurti riding in Scooter No. UA- 8-B-1351 and when he reached near Ganeshpur bridge, the driver of Maruti Car UP 11-G-4486 came there at a high speed and dashed the Scooter from back side, due to which the claimant sustained injuries on his left hand and leg and became disabled. According to the claimant he got treatment in Muzaffarnagar for the period 26.4.2004 to 7.5.2004 and spent about one lac. At the time of accident he was running a shop of ''Sudama Lassi'' but after the accident he is not able to run the shop. The claimant filed petition for award of compensation.

2. The owner of the Maruti Car filed written statement and alleged that the driver had valid driving license and the Car was insured with New India Assurance Company, therefore, the liability of compensation, if any, is upon the insurer.

3. The Insurance Company/Opposite Party No. 2, also contested the petition by filing its written statement and alleged that the owner and insurer of the Scooter involved in the accident have not been made party to the petition, therefore the

petition is bad for non-joinder of necessary party. It also alleged that the driver of the offending Car had no valid driving license, R.C. and fitness, therefore, the insurance company cannot be held liable to pay compensation.

4. The Tribunal, on the pleadings of parties, framed relevant issues in the petition. Thereafter, the injured/claimant adduced evidence in support of his case. The Insurance Company did not adduce any evidence. The Tribunal, thereafter on hearing the arguments of the parties and perusing the material on record, awarded a sum of Rs. 1,27,192/- as compensation against the New India Assurance Company.

5. Feeling dissatisfied with the amount of compensation, the claimant has preferred this appeal for enhancement.

6. Heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the claimant/appellant has submitted that the Tribunal has awarded a meager amount of compensation and it should be enhanced in appeal. According to him the Tribunal has taken the notional income on lesser side and it should be at higher rate as the accident pertains to the year 2004. Learned Counsel also submitted that the Tribunal has not awarded interest at all and submitted that interest be also awarded on the amount of compensation.

8. On the other hand learned Counsel for the Insurance Company has opposed the submissions raised by the counsel for the appellant and alleged that the Tribunal has awarded a just amount of compensation and the appeal is liable to be dismissed.

9. As far as the notional income which has been taken into consideration by the Tribunal is concerned, the same appears to be on lesser side. The Tribunal has taken Rs. 15,000/- per annum as notional income of the injured. The accident has taken place on 26.4.2004, therefore, in view of the decision of the Division Bench of this Court in A.O. No. 2 of 2005, Sobhan Singh and Anr. v. New India Insurance Company and Anr. decided on 1.11.2006, the notional income should be fixed at Rs. 36,000/- per annum due to price hike and after 1/3rd deduction towards personal expenses the amount comes to Rs. 24,000/- per annum. The Tribunal has considered the disability of the claimant as 30% and this consideration was based on the appreciation of the evidence and needs no interference. Therefore, in case, if on the permanent disability upto an exptent of 30%, is considered, then the amount of loss suffered by the claimant comes to Rs. 7,200/- per annum. The Tribunal has adopted a multiplier of 10 keeping in view the age of the claimant which again appears to be justified and does not require any interference. Therefore, after adopting the multiplier of 10 on the amount of Rs. 7,200/- the total amount comes to Rs. 7,200/- X 10= Rs. 72,000/-. The claimant has invested a sum of Rs. 82,192/- on his medical treatment and this amount has rightly been awarded in favour of the claimant by the Tribunal. Therefore, if the amount of Rs. 72,000/- is included in the amount of Rs. 82,192/-(expenses of medical treatment), then the total amount to be

awarded in favour of the claimants comes to Rs. 1,54,192/rounded to Rs. 1,54,200/-.

10. It appears from the perusal of impugned judgment and award that the Tribunal has not awarded any interest on the amount of compensation to be paid to the claimant. This does not appears to be justified. The Tribunal should have awarded interest on the amount of compensation. I am, therefore, of the opinion that the amount so awarded in favour of the claimant, i.e. Rs. 1,54,200/- should paid by the New India Assurance Company to the claimant along with an interest of 6% per annum from the date of filing the petition till the date of final payment.

11. For the reasons given above, the appeal is liable to be allowed.

12. Accordingly, the appeal is allowed. The impugned judgment and award dated 6-9-2006 is modified upto the extent that the claimant/appellant is awarded a sum of Rs. 1,54,200/- against the New India Assurance Company along with interest @ 6% per annum from the date of presentation of petition till the actual date of payment, instead of Rs. 1,27,192/- as has been awarded by the Tribunal.

