

(2009) 04 UK CK 0043
In the Uttarakhand High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Sonia Rana and Others		RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 04 UK CK 0043

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, 1988, is directed against the judgment and award dated 10.08.2007 passed by Motor Accident Claims Tribunal/First Fast Track Court, Nainital, in M.A.C.P. No. 109 of 2006, Smt. Sonia Rana and Ors. v. Chandra Pal Singh and Ors., awarding a sum of Rs. 12,00,000/- to the claimants as compensation against National Insurance Co. Ltd. with interest @ 6% per annum from the date of filing the petition.

2. Brief facts of the case, as narrated in claim petition, are that on 9.4.2006 at about claimant No. 1 Smt. Sonia Rana along with her husband Dayal Singh Rana was going towards Bhimtal from Haldwani by Scooter No. U.A.04-9331 in a moderate speed and as soon as the said scooter reached H.M.T. bend, another Scooter No. U.A.-2416 which was coming from the opposite direction rashly and negligently hit the scooter of Dayal Singh Rana, as a consequence of which Dayal Singh Rana and his wife sustained grievous injuries and they were taken to Krishna Nursing Home with the help of people by Rajendra Singh, where Dayal Singh Rana was declared dead by the doctor. The deceased had been working on the post of Scientist Assistant in Jamrani Dam Construction Division, Kathgodam and his promotion was due in May, 2006. The claimants claimed a sum of Rs. 20,60,000/- as compensation against the opposite parties.

3. The opposite parties in the claim petition contested the claim before the Tribunal and denied their liability to pay compensation to the claimants.

4. The learned Tribunal on the basis of pleadings of parties framed relevant issues in the claim petition. Parties led oral as well as documentary evidence in support of their cases. The learned Tribunal after having considered the entire material available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 12,00,000/- against opposite party No. 2- National Insurance Co. Ltd., along with conditional interest of 8% per annum, vide judgment and award dated 10.08.2007.

5. Feeling aggrieved by the aforesaid impugned judgment and award, the insurance company has preferred the present appeal before this Court.

6. Heard Sri Manish Dalakoti, Advocate holding brief of Sri D.S. Patni, learned Counsel for the appellant, Sri Lalit Sharma, learned Counsel for claimants-respondents No. 1 to 4, Sri M.K. Goyal, learned Counsel for respondent No. 6 and perused the record.

7. Learned Counsel for insurance company has firstly submitted that in this case accident was a result of head-on collision and it is a contributory negligence, but learned Tribunal has committed an error by holding vehicle No. U.A.04-2416 solely responsible for causing the accident. He has further invited my attention towards calculation made by the Tribunal in awarding the amount of compensation. He has also submitted that the multiplier of "16" adopted by the Tribunal is also on higher side.

8. As far as factum of accident is concerned, the Tribunal has discussed this point while deciding issue No. 1 in the claim petition. The insurance company of Scooter No. U.A.04-9331 has pleaded in its written statement that the said accident was caused on account of negligence of deceased-driver of U.A.04-9331 and driver of scooter of opposite party No. 1 was not at fault, therefore insurance company is not liable to pay the compensation. He has further pleaded that on the date of accident Scooter No. U.A.04-9331 was being plied without having papers and in breach of conditions of insurance policy. Opposite party No. 4, Hari Singh, who is the driver of Scooter No. U.A.04-2416, has been produced as DW-1. This witness has stated in his deposition that he was coming towards Haldwani from Bhimtal and as soon as he crossed H.M.T. Chauraha, Scooter No. U.A.04-9331 which was coming from opposite direction in a rash and negligent manner hit his Scooter, in which he also sustained injuries and accident was not caused on account of his negligence. This witness has also been cross examined and in his cross examination he has admitted that he neither lodged any report of the accident in the police station nor any case is pending against him with regard to accident. Learned Counsel for opposite party No. 2 has taken this plea before the Tribunal that it is a case of contributory negligence and in this circumstance both the vehicles are equally responsible, but in this regard opposite party No. 4 Hari Singh has been cross examined and he has admitted that deceased along with his scooter was falling on his side. The opposite party did not file any site plan of the accident which may show the actual position of vehicles at the place of occurrence. The Tribunal held that by merely saying that

deceased was coming downward and opposite party No. 4 was going upward, it cannot be presumed that deceased himself was negligent for causing the accident. The Tribunal after having considered the entire evidence adduced before it came to the conclusion that Dayal Singh Rana died on account of injuries sustained by him in the accident which occurred on 9.4.2006 at about 6.30, due to rash and negligent driving of driver of vehicle No. U.A.-04-2416. I do not find anything in the finding recorded by the Tribunal which may suggest that the same require any indulgence by this Court. The finding recorded by the Tribunal in this respect deserves to be confirmed.

9. As far as amount of compensation to be awarded in favour of claimants is concerned, the claimants stated in the claim petition that salary of deceased was Rs. 9,867/- per month at the time of accident, whereas salary certificate of deceased shows that gross salary of deceased was Rs. 8,437/- per month. Learned Counsel for opposite party No. 2 relying upon the judgment of the Hon"ble Apex Court passed in the case of Asha v. United India Insurance Co. Ltd. has pleaded that for calculation of compensation the net payable salary after usual deductions should be taken into consideration. The Tribunal keeping in view the principle laid down in the above cited judgment has taken into account at Rs. 9200/- per month after deductions which comes to Rs. 1,11,624/- per annum. The finding recorded by the Tribunal in this respect appears to be justified and I do not find any reason to disturb the same. Further, the record shows that deceased was aged about 39 years at the time of accident. However, multiplier of "16" adopted by the Tribunal appears to be on higher side in view of the latest pronouncement of the Hon"ble Apex Court given in the cases of Tamil Nadu State Transport Corporation Ltd. v. S. Rajpriya and Ors. reported in 2005 (4) SC 87, The Managing Director, TNSTC v. Sripriya and Ors. reported in 2007(5) Supreme 301, New India Assurance Co. Ltd. v. Kalpana (Smt.) and Ors. reported in (2007) 2 SCC (Cri) 94 and Laxmi Devi and Ors. v. Mohammad Tabbar and Anr. reported in 2008 UAD 587. Keeping in view the age of the deceased the multiplier in this case cannot travel more than "12" in any case and if the multiplier of "12" is adopted in this case, then the amount of compensation comes to Rs. 1,11,624 x 12 = Rs. 13,39,488/-. After deducting one-third out of said amount towards personal expenses of the deceased, the financial dependency of the claimants comes to Rs. 8,92,992/- per annum (rounded Rs. 8,93,000/-). The Tribunal has further awarded a sum of Rs. 10,000/- in lump sum for funeral expenses, loss of consortium etc. I think that the amount awarded by the Tribunal under the aforesaid heads appears to be just and reasonable and needs no interference.

10. As far as interest awarded by the Tribunal is concerned, the Tribunal has awarded conditional interest of 6% per annum on the amount of compensation, which, to my mind, does not appear to be just and proper. The claimants are entitled to get interest @ 6% per annum on the amount of compensation from the date of filing the petition till the date of actual payment (instead of conditional interest of 6% per annum as awarded by the Tribunal).

11. on the basis of the aforesaid calculation, the claimants are entitled for a sum of Rs. 8,93,000 + Rs. 10,000 = Rs. 9,03,000/- as compensation along with interest @ 6% per annum from the date of filing the petition till the date of actual payment.

12. Accordingly, appeal is partly allowed. The impugned judgment and award is modified to the extent that claimants are entitled for a sum of Rs. 9,03,000/- (Rupees nine lacs three thousand only) as compensation along with interest of 6% per annum from the date of filing the petition till the date of actual payment (instead of compensation of Rs. 12,00,000/- along with conditional interest of 6% per annum as awarded by the Tribunal).

13. The statutory amount deposited by the appellant with this Court be remitted to the Tribunal concerned.