
(2005) 07 UK CK 0047
In the Uttarakhand High Court

National Insurance Company Ltd.

APPELLANT

Vs

Hema Sah and Others

RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2005) 3 ACC 437

Hon'ble Judges : Prafulla C. Pant, J;P.C. Verma, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 110-D of Motor Vehicles Act, 1939, is directed against judgment and award dated 2.3.1984, passed by Motor Accident Claims Tribunal/District Judge, Pithoragarh, whereby an amount of compensation to the tune of Rs. 41,600/- with interest at the rate of 6% per annum, was awarded in favour of the claimants.

2. Brief facts of the case are that one Shri Lalit Mohan Sah, aged about 34 years, was travelling on 18.4.1982, along with other passengers in bus registration No. U.P. Y-1142. At about 6.45 a.m., between Bankot and Seraghaat, when the said bus was being driven rashly and negligently by its driver, it fell into a deep gorge in which Shri Sah, received grievous injuries and died due to said injuries. Claimant No. 1 Smt. Hema Sah is widow of the deceased, claimant No. 2 Nidhi, is daughter and claimant No. 3 is son of the deceased. The deceased was Physical Training Instructor at Bankot and was earning Rs. 828/- per month. The aforesaid bus was being plied under the Management Of Kumaon Motor Owners Ltd. and was insured, at the time of the accident, with National Insurance Company. A total amount of Rs. 5,00,000/-, was claimed by the claimants as amount of compensation. The owners of the bus, filed a joint written statement, before the Tribunal and denied the negligence on the part of the driver. However, they pleaded that the bus was insured with the National Insurance Company at the time of the accident. The Insurance Company, filed its separate written statement, pleading its liability limited to the extent of Rs. 50,000/- in an accident

and to a maximum of Rs. 5,000/- for each passenger u/s 95(2) of Motor Vehicles Act, 1939. Learned Tribunal, after framing the necessary issues, recording the evidence and after hearing the parties, awarded an amount of compensation to the tune of Rs. 41,600/- along with 6% interest thereon for the period of pendency of claim petition, apart from Rs. 500/- as costs towards the fee of the Counsel. The Tribunal further directed that the amount shall be paid by the National Insurance Company with whom the vehicle was insured. Aggrieved by said award, this appeal was preferred before Allahabad High Court, from where it has been received by transfer u/s 35 of U.P. Reorganisation Act, 2000.

3. We heard learned Counsel for the parties and perused the lower Court record and also heard the parties on cross-objections, filed on behalf of the claimants.

4. P.W. 3 Mohan Ram, co-passenger, travelling with the deceased has stated on oath, before the learned Tribunal that the bus was being driven rashly and negligently by its driver which resulted in the accident. There is nothing on the record to disbelieve the statement. We are in agreement with the finding of the learned Tribunal, that in view of the spot inspection (Paper No. 46 C/4), Site plan (Paper No. 46 C/6), read with statement of P.W. 3, Mohan Ram and P.W. 4 Prem Chandra Upereti, it is proved on the record that the bus registration No. U.P. Y-1142, was being driven rashly and negligently by its driver in which Shri Lalit Mohan Sah, received injuries and died succumbing to said injuries.

5. As to the income of the deceased, P.W. 1 Smt. Hema Sah has stated on oath that her husband was employed as Physical Training Instructor in Government Intermediate College, Bankot and at the time of his death, he was drawing Rs. 828.50 paise per month. She has further stated that age of the deceased was 34 years at the time of his death. P.W. 1 Hema Sah, has further stated that the deceased has left behind him apart from herself, two children, namely Nidhi and Nitin who were aged 2 and 1 years respectively at the time of his death. On income of the deceased, statement of P.W. 1 Hema Sah gets corroborated from the statement of P.W. 2 Shri B.D. Pande, clerk in the office of Deputy Director, Education, who filed certificate of income-Paper No. 37-C, before the Tribunal, which shows that the income of the deceased was just below Rs. 900/-. Learned Tribunal has assessed loss on account of dependency only to the tune of Rs. 300/- per month. In our opinion, with round figures of one-third of Rs. 900/-, the deceased would have spent Rs. 300/- on himself. That being so, the actual loss to the family should have been assessed at Rs. 600/- per month and not Rs. 300/-. However, the said difference would not practically affect the award in question for the reason that for a person, aged 34 years, learned Tribunal has applied multiplier of 24, while in our considered view, it should not have been more than 12. That being so, the net amount of loss to the family which has been calculated by the learned Tribunal, as $\text{Rs. } 300 \times 12 \times 24 = \text{Rs. } 86,400/-$, should have been $\text{Rs. } 600 \times 12 \times 12 = \text{Rs. } 86,400/-$. Any way, in either case, the net amount comes out to be the same. We are in agreement with the learned Tribunal that Rs. 1,000/- towards the funeral expenses and Rs. 5,000/- towards

the consortium, has rightly been assessed and added to aforesaid amount which makes it to Rs. 92,400/-. In view of the lump sum amount, which the deceased would not have earned in one go, learned Tribunal has rightly deducted 33% of said sum and net amount of compensation was worked out to be Rs. 61,600/-. Also, we are in further agreement with the learned Tribunal that Rs. 20,000/- which was already paid by the Collector, Pithoragarh as ex gratia payment to the claimants, should have been deducted from aforesaid amount. Therefore, as to the amount awarded i.e., Rs. 41,600/-, the award does not need any interference.

6. Learned Counsel for the appellant, argued that in view of Section 95(2)(b) of Motor Vehicles Act, 1939, the liability of Insurance Company is limited in respect of one accident only to Rs. 50,000/-, and for individual, passenger, it is up to Rs. 5,000/-. However, appellant failed to show us such clause in the policy. Rather, our attention was drawn on behalf of the appellant to Motor Vehicles (Amendment) Act, 1982, which came into force w.e.f. 1.10.1982. However, the said amendment was not retrospective and learned Tribunal, rightly refused to apply said provision, as the accident had already taken place date 18.4.1982, before the amendment, came into force. As such, we see no force in the contention of learned Counsel for the appellant. Our attention was drawn on behalf of the appellant principle of law laid down in *New India Assurance Co. v. C.M. Jaya I* (2002) ACC 299 in which it has been held that the liability of the Insurance Company under the old Act was limited under Section 95(2) of Motor Vehicles Act, 1939. From said judgment, it is not clear if it related to accident, prior to 1.10.1982. As such, the said case law is of no help in the present case. Apart from this the principle of law contained in *New India Assurance Co. Ltd. Vs. Kiran Singh and Others*, , supports the view, taken by learned Tribunal in the matter.

7. In view of the above discussion the appeal is liable to be dismissed. The appeal is dismissed. Cross-Objections are also dismissed. No order as to costs. The appellant-National Insurance Company shall make the payment of the sum awarded, vide impugned award dated 2.3.1984, within a month from to-day, failing which it shall be liable to pay 9% interest per annum, on the awarded sum thereafter.