

(2009) 06 UK CK 0060
In the Uttarakhand High Court

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Ansuya Devi and Others

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 06 UK CK 0060

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicle Act, 1988 has been filed by the appellant/insurance company against the judgment and award dated 25.08.2006 passed by Motor Accident Claims Tribunal/District Judge, Pauri Garhwal in Motor Accident Claim Case No. 42 of 2005, Smt. Ansuya Devi and Ors. v. National Insurance Company Ltd. and Ors.

2. Brief facts of the case are that on 25.03.2005 at about 06:45 p.m. the deceased - Girdhari Singh was going to purchase household goods from his house, suddenly, a truck bearing registration No. UP24C/8370, which was being driven by its driver in a very rash and negligent manner, hit the deceased - Girdhari Singh, due to which he sustained multiple injuries on his body. Immediately after the accident, he was admitted in the Hospital, Kotdwar. The doctors considering the serious injuries of the deceased referred him to Jeoligrant Hospital, but he had died on the way to hospital. According to the claim petition, the deceased was 43 years of age and working as a driver and used to earn Rs. 5,000/- per month as salary. Therefore, the claimants filed claim petition for a sum of Rs. 32,40,000/- as compensation.

3. The opposite party No. 1 - National Insurance Company Ltd. contested the claim petition by filing written statement before the Tribunal denying most of the allegations made in the claim petition. It has pleaded that the accident took place due to negligence of the deceased himself. It has further pleaded that the driver of the truck in question was not having the valid and effective driving licence.

Therefore, the insurer of the vehicle is not liable to pay any compensation.

4. The opposite party No. 2 - Mukesh Kumar (owner of the truck in question) also contested the claim petition by filing written statement before the Tribunal on the ground that vehicle in question was not involved in the accident. It has also alleged that the driver of the vehicle was having the valid and effective driving licence and the vehicle was insured with the National Insurance Company Ltd., therefore, the liability of compensation lies upon the insurer of the vehicle in question.

5. On the basis of the pleadings of the parties, the Tribunal has framed following issues, for consideration:

1. Whether deceased - Girdhari Singh died due to the injuries received in an accident on 25.03.2005 at about 06:45 p.m. near Shivalik Nagar, Najibabad Road, on account of rash and negligent driving by the driver of Truck No. UP24C/8370?

2. Whether accident took place by own negligence of the deceased at the time of accident?

3. Whether the vehicle in question was not insured with O.P. No. 1 at the time of the accident?

4. Whether the driver of the vehicle⁴ had not possess the valid and effective driving licence at the time of the accident?

5. Whether the claimants are entitled any compensation? If any, yes from whom?

6. Thereafter both the parties led evidence in support of their case. After hearing learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 3,67,000/- along with conditional interest @ 9% per annum vide judgment and order dated 25.08.2006.

7. Feeling aggrieved by the aforesaid judgment and award, the appellant/ National Insurance Company Ltd. has preferred this appeal before this Court.

8. None has appeared on behalf of respondent Nos. 1 to 5, in spite of sufficient service of notice. Heard Sri Bindesh Kumar Gupta, learned Counsel for the appellant, Sri Kurban Ali, learned Counsel for the respondent No. 6 and perused the record.

9. As far as the factum of accident is concerned, the Tribunal decided issue No. 1 in this regard. The findings recorded by the Tribunal that the accident took place on account of rash and negligent driving of the driver of the truck in question is concerned, that appears to be completely justified. The Tribunal has categorically held if the deceased himself was negligent, the owner had to produce the driver before the court below in order to support his version but he could not do so. I am also in agreement with the findings recorded by the Tribunal while deciding

issue Nos. 1 and 2 in this regard. The Tribunal also considering the documents available on record came to the conclusion that on the date of accident the driver was having the valid and effective driving licence and the vehicle in question was insured with the National Insurance Company Ltd., therefore, I do not find any ground to touch the findings recorded by the Tribunal in this regard.

10. Learned Counsel for the appellant has submitted before the Court that the Tribunal has committed error while calculating the amount of compensation. He has submitted before the Court that the Tribunal has committed illegality by adopting the multiplier on the higher side as well as awarding compensation along with higher rate of interest.

11. As far as the amount of compensation to be awarded in favour of the claimants is concerned, the Tribunal has discussed this point while deciding issue No. 5 but the trial court has fell in error while applying the principle of multiplier in this case. The record shows that the age of the deceased was 43 years at the time of the accident. The multiplier which has been adopted by the trial court in this case is "15" which is admittedly on the higher side in view of the catena of decisions of Hon"ble Apex Court in *The New India Assurance Company Ltd. v. Smt. Kalpana and Ors.* reported in (2007) 2 Scc (Cri) 94, *T.N. State Transport Corporation v. S. Rajapriya and Ors.* reported in (2005) 6 SCC 276 and *The Managing Director, TNSTC v. Sripriya and Ors.* reported in 2007 (5) Supreme 301. Keeping in view the age of the deceased as well as aforesaid decisions of Hon"ble Apex Court, in the instant case, the multiplier cannot travel more than "10" in any manner. In case, the multiplier of "10" is adopted in this case then the amount of compensation comes to Rs. 2,40,000/- (24000 X 10). So far as the amount awarded by the Tribunal under other different heads, shall remain intact. On the basis of the aforesaid calculation, the total amount of compensation comes to Rs. 2,47,000/-.

12. The second count is that the interest indicated in the impugned judgment and award, the rate of bank interest was 7% per annum. Therefore, in this case it would be proper to award the amount of compensation to the claimants along with interest @ 7% per annum from the date of filing the claim petition till the date of actual payment.

13. With the aforesaid observations, the appeal is partly allowed. The impugned judgment and award is modified upto the extent that the claimants are entitled to get Rs. 2,47,000/- instead of Rs. 3,67,000/- as has been awarded by the Tribunal along with interest @ 7% per annum (instead of conditional 9%) as has been awarded by the Tribunal in the impugned judgment and award.

14. The statutory amount deposited by the appellant before this Court at the time of filing the appeal be remitted to the Tribunal concerned.