(2008) 06 UK CK 0047

In the Uttarakhand High Court

National Insurance Company Ltd. APPELLANT

Vs

Surendra Singh Chauhan and Others RESPONDENT

Date of Decision : 05-06-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2008) 06 UK CK 0047

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 31.03.2006 passed by M.A.C.T/District Judge, Dehradun in Motor Accident Claim Case No. 51 of 2005 whereby the Tribunal awarded a sum of Rs. 9,08,050/- in favour of the claimants.

2. Brief facts of the case are that the deceased Smt. Raj Kumari was traveling in Vikram No. UP07J/8180 and when the said vehicle reached near the place of occurrence all of a sudden a bus bearing registration No. UP07G/7391, which was being driven by its driver in a very rash and negligent manner, hit the vikram from face to face with the result, she sustained grievous injuries and on the same day i.e. 21.08.2004 died in the hospital during the course of her treatment. According to the claim petition, the deceased was about 42 years of age and working as an agent of L.I.C. as well as doing the work of tailoring etc at her place in all she was earning Rs. 15,000/- per month. The claimants are the husband and two minor daughters of the deceased claiming Rs. 50,01,050/- as compensation.

3. Sri Virendra Singh and Sri Madan Singh in spite of sufficient service did not appear before the Tribunal concerned. Therefore, the case against them proceeded exparte.

4. The National Insurance Company Ltd. Contested the claim petition by filing

written statement before the Tribunal concerned on the ground inter-alia that the claim petition is defective on account of non-joinder of the necessary parties i.e. owner and insurer of Vikram. It has further pleaded that the bus was not insured and the driver of the bus was not holding a valid driving licence.

5. On the basis of the pleadings of the parties, the Tribunal has framed relevant issues, which reads as under:

1. Whether on 21.08.2004 at about 08:45 a.m. near Balyogi Ashram Rajpur Road, Dehradun due to rash and negligent driving of the driver of bus No. UP07G/7391, a motor accident took place in which Smt. Raj Kumari died? If so, its effect?

2. Whether the petition is bad for non-joinder of the parties?

3. Whether the petitioners are entitled for any compensation? If so, how much and from which party?

6. In order to support their cases, both the parties led evidence in support of their cases. The Tribunal after hearing learned Counsel for the parties and perusing the entire material available on record allowed the claim petition to the tune of Rs. 9,08,050/- in favour of the claimants vide judgment and award dated 31.03.2006.

7. Feeling aggrieved by the aforesaid judgment and award, the Insurance Company preferred this appeal before this Court.

8. Heard Sri Manish Dalakoti holding brief of Sri D.S. Patni, learned Counsel for the appellant, Sri M.K. Goyal, learned Counsel for the respondents/claimants and perused the record.

9. Perusal of the impugned judgment as well as going through the entire record available before me, I am of the view that the issue No. 1 relating to the rash and negligent has rightly been decided by the Tribunal. In another claim petition filed by one Sadhu Ram related to the same accident, in which the liability of negligence was imposed upon the driver of the bus and the driver of the tempo in which the deceased along with Sadhu Ram etc. was traveling was not found having liable for contributory negligence. Therefore, the claim petition against the owner of the tempo was rightly dismissed.

10. As far as the amount of compensation is concerned, the Tribunal considered the age of the deceased between 40 to 45 years. The Tribunal on the basis of the statement made by Sri Surender Singh Chauhan who is the husband of the deceased himself admitted this fact that his wife was not an income tax payee and whatever amount of tax was deducted at source by the L.I.C., she got the refund from the Income Tax Department. Therefore, the Tribunal came to the conclusion that the deceased would have paid income tax but non payment of income tax clearly shows that the assertion that the deceased was also earning a substantial amount from stitching and cutting of cloths is a mere attempt to get

exaggerated amount. The Tribunal on the basis of certificate issued by L.I.C. of T.D.S. shows that annual income of the deceased in the relevant years was Rs. 90,134/- per annum and in order to calculate the compensation is rounded and fixed at Rs. 90,000/- per annum. The Tribunal further adopted the multiplier of ''15'' in order to calculate the amount of compensation.

11. Learned Counsel for the appellant has invited my attention towards the multiplier adopted by the Tribunal which is ''15'' and alleged that the multiplier is on higher side. In order to support his submission, he placed before me the decisions of the Hon''ble Apex Court in The New India Assurance Company Ltd. v. Smt. Kalpana and Ors. reported in (2007) 2 SCC 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) SCC 301.

12. Learned Counsel for the respondent has submitted that the Tribunal after considering the age of the deceased as well as table given u/s 163A of the Motor Vehicle Act adopted the multiplier of ''15'', which is just and proper.

13. After going through the aforesaid decisions of Hon''ble Apex Court, I do not find any force in the submission advanced by learned Counsel for the respondent. I have gone through the judgments of the Hon''ble Apex court as well as keeping in view the age of the deceased, multiplier of ''12'' would be just and proper in this case.

14. I am, therefore, of the view that the multiplier adopted by the Tribunal as ''15'' is liable to be set aside and a multiplier of ''12'' in this Court would be just and proper.

15. As discussed above, the Tribunal after hearing learned Counsel for the parties as well as perusing the entire material available on record considered the annual income of the deceased as Rs. 90,000/- and after deducting 1/3rd amount towards personal expenses it comes to Rs. 60,000/and using the multiplier of ''12'', the total amount of compensation comes to Rs. 7,20,000/-. The Tribunal further awarded a sum of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium and further Rs. 1,050/- towards treatment expenses which does not required any interference. In this way, the total amount of compensation comes to Rs. 7,28,050/- as compensation along with interest @ 6% per annum from the date of filing the claim petition till the actual payment.

16. With the above observation, the appeal is partly allowed. The impugned judgment and award is modified upto the extent that the claimants are entitled to get Rs. 7,28,050/- instead of Rs. 9,08,050/- along with interest @ 6% per annum from the date of filing the claim petition till the actual payment.

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