
(2004) 07 UK CK 0017
In the Uttarakhand High Court
Case No : A.F.O. No. 485 of 2001

New India Assurance Co. Ltd.

APPELLANT

Vs

Jiwanti Bhandari and Others

RESPONDENT

Date of Decision : 07-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 2 ACC 258 : (2005) ACJ 104 : (2004) 2 UD 141

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

Bench : Division Bench

Advocate : R.B. Agarwal, for the Appellant; Amit Bhatt, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pant, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 30.5.1990 passed by Mr. R.M. Rai, the then learned III Additional District Judge/ Presiding Officer, Motor Accidents Claims Tribunal, Nainital (Camp at Haldwani) whereby in M.A.C. Case No. 106 of 1988 the Tribunal has awarded Rs. 4,58,000 as compensation to the applicants.

2. Brief facts of the case giving rise to the present appeal are that on 10.1.1988, Ram Singh Bhandari, the deceased, was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Ram Singh Bhandari (deceased) and many other passengers got burn injuries and died. The deceased was earning Rs. 1,885 per month as salary. Jiwanti Bhandari, claimant No. 1 is widow of the deceased while Manju Bhandari (claimant No. 2) and Mukesh Bhandari (claimant No. 3) are daughter and son respectively of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Co. Ltd. (present appellant) was the company with whom the vehicle was insured. The opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial court, the owner of the vehicle has admitted the accident and death of the passengers including that of Ram Singh Bhandari. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. The learned Presiding Officer of the Tribunal after examining the pleas, framed following issues:

(i) Whether the accident in question occurred on account of negligence in driving on the part of the driver of bus having registration No. URN 9428?

(ii) Whether the bus was being driven at the relevant time for and on behalf of opposite party No. 1 or for and on behalf of opposite party No. 3? In either case, its effect?

(iii) Whether in the accident in question, Ram Singh Bhandari, the husband of the petitioner and father of petitioner Nos. 2 and 3 had died in the accident?

(iv) Whether on the date of the alleged accident the opposite party No. 1 was not the owner of the vehicle? If so, its effect?

(v) Whether at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

(vi) Which of the opposite parties is liable to pay compensation to the claimants?

(vii) To what amount of compensation, if any, the claimants are entitled?

(viii) Whether the bus was owned by opposite party No. 4 on the date of accident, if so, its effect?

5. After recording the evidence of the parties and hearing them, learned Presiding Officer of the Tribunal has found that the accident in question has taken place due to rash and negligent driving on part of the driver, who was employed by the opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 4,58,000 and New India Assurance Co. Ltd. with whom the vehicle was insured was liable to pay it. Accordingly, the award was passed for the sum along with 12 per cent interest on the amount of compensation. Aggrieved with the award, New India Assurance Co. Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record.

7. The learned counsel for the appellant argued that the deceased was aged 45 years and the multiplier applied by the Tribunal is 25 which is too high. We are also of the view that in the case of a person aged 45 years multiplier of 25 is too

high and the reasonable multiplier in the facts and circumstances of the case should not have been more than 16. There is no special reason in the impugned judgment why the multiplier of 25 has been applied in the present case. Merely mentioning that the person died could have lived up to the age of 70 years does not make out a case that he would be supporting the family till that point of time. In our considered opinion, since the monthly income of the deceased was Rs. 1,885 and 73rd of his earnings would have been spent on his own expenses as such the deceased would have spent the remaining Rs. 1,257 or say Rs. 1,260 per month on the claimants. As such the amount of compensation on applying the multiplier of 16 should have been assessed at Rs. $1,260 \times 12 \times 16 =$ Rs. 2,41,920. We are also of the view that the rate of interest of 12 per cent should have been imposed only if the appellant had failed to deposit the amount of compensation within the time allowed. Therefore, we feel that on the aforesaid amount the insurance company should have been made liable to pay 9 per cent interest per annum from the date of petition till the date of award and 12 per cent interest should have been imposed only if the company failed to deposit the sum awarded. As to the rest of the findings of the Tribunal we are in agreement with it.

8. For the reasons as above, we direct that the appellant shall pay compensation to the tune of Rs. 2,41,920 instead of Rs. 4,58,000 to the claimants and 9 per cent interest per annum thereon from the date of petition till date and if the sum is not already deposited so far, the rate of interest shall be 12 per cent per annum from the date of this judgment.

9. The appeal is accordingly disposed of.