
(2019) 06 UK CK 0035

In the Uttarakhand High Court

Case No : Appeal From Order No. 591 Of 2015

New India Assurance Co. Ltd

APPELLANT

Vs

Seema Bisht And Others

RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Citation : (2019) 06 UK CK 0035

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : M.K. Goyal, Tarun Pande

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. The present appeal from order has been filed by the appellant against the award of the Motor Accident Claims Tribunal, Nainital dated 21.08.2015 passed in MACP No. 192 of 2012, whereby a compensation of Rs.5,09,000/- (Rupees Five Lakh Nine Thousand Only) has been awarded to the claimants.

2. Brief facts of the case are that on 29.02.2012 at 06:30 pm one Mahipal Singh was waiting for his bus near Gabuwa Post Office between Ramnagar and Belparaw in District Nainital when a truck bearing registration no. U.P.32Z-1687 (from hereinafter referred to as "offending truck") which was coming from the side of Ramnagar had hit Mahipal Singh who sustained grievous injuries as a result of the accident and was taken to the Government Hospital from where he was referred to the higher center. He passed away while on the way. Subsequently claim was made by the wife, son and also by the elderly father of the deceased, who during the pendency of the claim petition passed away. The learned Tribunal framed the following three issues:-

"(1) Whether on 29.02.2012 at 6:30 the driver of offending vehicle dashed Mahipal Singh to save a child who suddenly came in front of the offending

vehicle, consequently Mahipal sustained grievous injuries and subsequently he died; if so its effect?

(2) Whether on the date of incident the offending vehicle was not being driven with the terms & condition of insurance policy and the driver of offending vehicle was not having valid driving licence; if so its effect?

(3) Whether the claimants are entitled to any compensation, if so, how much and from whom?"

3. On the first issue, the finding of the learned Tribunal is that the offending vehicle had hit Mahipal Singh and he sustained grievous injuries consequently and subsequently died. On the second issue also, a categorical finding is that the driver was having a valid licence. As to the amount of claim, the learned Tribunal came to the conclusion that the deceased was earning Rs.40,000/- (Rupees Forty Thousand Only) per annum by doing agricultural work. However, since no proof was given to this effect, the learned Tribunal relying upon the decisions of the Hon'ble Apex Court and various High Courts has held that where the income of the deceased is not proved, it is appropriate and just to assess the deceased's income as Rs.36,000/- (Rupees Thirty Six Thousand Only) per annum and thus Rs.36,000/- (Rupees Thirty Six Thousand Only) per annum income of the deceased was assessed by the Tribunal. After deducting one-third amount from the income of the deceased towards personal and living expenses, net actual contribution amount towards his family comes to Rs.24,000/- (Rupees Twenty Four Thousand Only) per annum. Thereafter a multiplier of 16 was applied for calculating the compensation and thereby a compensation of Rs.3,84,000/- (Rupees Three Lakh Eighty Four Thousand Only) based on the decision of the Hon'ble Apex Court in the case of Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121 was given. Apart from this, a compensation of Rs.1,00,000/- (Rupees One Lakh Only) and Rs.25,000/- (Rupees Twenty Five Thousand Only) were also awarded by the learned Tribunal under the head of loss of consortium and funeral expenses respectively. Thus a total compensation of Rs.5,09,000/- (Rupees Five Lakh Nine Thousand Only) along with an interest at the rate of 9% per annum from the date of filing the claim petition till the actual payment is made was awarded by the learned Tribunal.

4. The award seems to be just and proper and in accordance with the law laid down by the Hon'ble Apex Court.

5. In view of the above, no interference is being called for in the matter. The appeal is hereby dismissed.

6. Let the entire amount be deposited by the appellant before the concerned Tribunal within a period of three weeks from the date of production of a certified copy of this order, which shall be given to the claimants forthwith. The statutory amount shall also be returned to the concerned Motor Accident Claims Tribunal forthwith by the Registry of the High Court. It is, however, made clear that the

amount already deposited by the appellant shall be adjusted from the above amount.