(2009) 07 UK CK 0058

In the Uttarakhand High Court

Case No : A.F.O. No. 200 of 2008

Reema and Another APPELLANT

Vs

United India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2011) ACJ 664

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the Appellants-claimants, against the judgment and award dated 1.4.2008 passed by Motor Accidents Claims Tribunal/District Judge, Haridwar in M.A.C.P. No. 26 of 2006, Reema v. Divisional Manager, United India Insurance Co. Ltd. whereby Claims Tribunal has awarded a sum of Rs. 1,75,000 to the claimants as compensation.

2. The claimants filed a claim petition before the Claims Tribunal for grant of compensation of Rs. 7,20,000 in lieu of death of deceased Satendra Kumar in a motor vehicle accident alleging therein that on 7.11.2004 at 4 a.m. Satendra Kumar had gone to Saharanpur in the capacity of driver of vehicle No. DL 1-LB 5315 and the said vehicle met with an accident, in which he sustained injuries and succumbed to those injuries.

3. Opposite party No. 1 insurance company contested the claim and denied its liability to pay the compensation on the ground that at the time of accident vehicle was not being plied with a valid driving licence and valid papers. Opposite party No. 2 did not file any written statement, while opposite party No. 3 took the plea in his written statement that he being the father of the deceased is also entitled to compensation of Rs. 2,40,000.

4. The learned Tribunal on the basis of pleadings of the parties framed necessary

issues in the claim application. The parties led evidence in support of their case. The learned Tribunal after having considered the entire evidence available on record and hearing the learned Counsel for the parties, decreed the claim petition for a sum of Rs. 1,75,000, against opposite party No. 1, insurance company, along with interest at the rate of 5 per cent per annum from the date of filing the petition till the date of actual payment, vide impugned judgment and award dated 1.4.2008.

5. Feeling aggrieved by the aforesaid impugned judgment and award, Appellants-claimants have preferred the present appeal before this Court seeking enhancement of amount of compensation. Heard Mr. Bali, Advocate on behalf of Mr. Davesh Bishnoi, learned Counsel for Appellants-claimants, Mr. K.K. Shah, learned Counsel for the Respondent No. 1 insurance company and perused the record. None has appeared on behalf of Respondent Nos. 2 and 3 despite sufficient service of notice.

6. As far as factum of accident is concerned, the Tribunal having considered the entire evidence adduced before it recorded the finding that on 7.11.2004 vehicle No. DL 1-LB 5315 met with an accident, in which Satendra Kumar received injuries and succumbed to those injuries, which appears to be completely justified and I am also in agreement with the findings recorded by the Tribunal.

7. The Tribunal further held that at the time of accident vehicle in question was not being plied in breach of policy conditions, which also appears to be justified and the said finding is based on evidence available on record.

8. As far as amount of compensation to be awarded in favour of the claimants is concerned, the Tribunal while deciding issue No. 6 has discussed this aspect, but the approach adopted by the Tribunal appears to be erroneous firstly on the ground that the notional income in this case has been assessed by the Tribunal on lower side. The accident in this case took place on 7.11.2004 and during the year of accident on account of price hike the notional income of a person has been assessed at Rs. 36,000 per annum in view of the decision of Division Bench of this Court passed in A.O. No. 2 of 2005, Shobhan Singh v. New India Assurance Co. Ltd. In case, if notional income of Rs. 36,000 per annum is taken into account in this case, then after deducting 1/3rd out of the same, financial dependency of the claimants would come to Rs. 24,000 per annum.

9. The age of the deceased at the time of the accident was 24 years. The Tribunal again fell in error in adopting the multiplier of'' 17'' in this case, which is admittedly on higher side in view of the various decisions of the Hon''ble Apex Court given in the cases of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, ; The Managing Director, TNSTC Vs. Sripriya and Others, and The New India Assurance Company Limited Vs. Smt. Kalpana and Others, . It is true that deceased was a young person who left behind young widow and minor daughter, even then I am of the view that multiplier in this case could not have travelled more than ''15''. After adopting the multiplier of ''15'' the amount

of compensation to be awarded in favour of the claimants comes to Rs. 24,000 x 15 : Rs. 3,60,000. The amount awarded by the Claims Tribunal under other different heads for a sum of Rs. 5,000, shall remain intact.

10. For the reasons stated above, I am of the view that the claimants-Appellants are entitled for a sum of Rs. 3,60,000 + Rs. 5,000 : Rs. 3,65,000 as compensation, along with interest of 5 per cent per annum as indicated in the impugned judgment and award instead of Rs. 1,75,000 as has been awarded by the Tribunal.

11. Accordingly, the appeal is partly allowed. The impugned judgment and award is modified to the extent that Appellants are entitled for a sum of Rs. 3,65,000 (rupees three lakh sixty-five thousand) as compensation along with interest of 5 per cent per annum as indicated in the impugned judgment and award instead of Rs. 1,75,000 as has been awarded by the Tribunal.

