(2006) 09 UK CK 0033

In the Uttarakhand High Court

Case No : Appeal from Order No. 292 of 2005

Smt. Cheema Devi and Another APPELLANT

Vs

U.P. State Road Transport Corporation and Others RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2007) 2 UC 810

Hon'ble Judges : Rajeev Gupta, C.J;Rajesh Tandon, J

Bench : Division Bench

Advocate : G.B. Pandey, for the Appellant; A.N. Sharma and K.K. Sah, for the Respondent

Judgement

Rajesh Tandon, J.—Heard Sri G.B. Pandey, counsel for the Appellants, Sri A.N. Sharma, counsel for the Respondent No. 1 and Sri K.K. Sah, counsel for Respondent No. 3.

2. This appeal is against the Award dated 26-02-2003, passed by the Motor Accident Claims Tribunal, Pithoragarh for enhancement of the amount of award.

3. The claimants/Appellants preferred a claim petition u/s 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Deb Singh Bohra in a motor vehicle accident. According to the claimants on the fateful day on 27-1-1998 at 7.15 PM two buses No. UP 02-A/4075 and UGP-4733 were collided to each other near Chamdungra, Police Station, Gangolihat, District Pithoragarh. The deceased was boarded on Bus No. UP 02-A/4075 which fell down into a ditch after collision. Sri Deb Singh Bohra sustained fatal injuries in the accident and he died instantaneously. According to the claimants at the time of accident the deceased was 52 years of age. He was doing work of mason and was earning Rs. 3,600/- per month.

4. The Respondent No. 1, Uttaranchal State Road Transport Corporation filed written statement and submitted that at the time of accident the bus of the

Respondent No. 1 was going in upward direction on the sloppy road while the bus of Respondent No. 2 was coming downwards from the opposite direction. The accident took place due to the rash and negligence of the driver of Bus No. UGP 4733 and Respondent No. 2 alone is liable to pay compensation.

5. Respondent No. 2 in his written statement has submitted that the accident took place due to rash and negligent driving by the driver of Bus No. UP 02-A/4075. Bus No. UGP 4733 was parked on the road while the Bus of Respondent No. 1 dashed his bus. The driver of the bus of Respondent No. 1 jumped from the bus after collision and the bus rolled behind and fell down into the ditch. The accident took place due to sole negligence of the driver of Bus No. UP-02-A/4075.

6. Respondent No. 3 Insurance Company also filed written statement and pleaded ignorance regarding the facts mentioned in the claim petition.

7. The claimants examined P.W.1 Cheema Devi, P.W.2 Karan Singh and P.W.3 Rajendra Singh Bhandari and have filed copy of the post mortem report and certificate of near relatives issued by the District Administration, Bajhang, Nepal. Opposite parties examined D.W.1 Sri Durga Singh and D.W.2 Sri Mangal Singh.

8. On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to the contributory negligence of both the bus drivers. The Claims Tribunal assessed the negligence of driver of Bus No. U.P. 02-A/4075 belonging to the Respondent No. 1 to the extent of 70% while the negligence of the driver of Bus No. UGP 4733 was assessed to the extent of 30%.

9. So far as the compensation is concerned the Tribunal has recorded the finding that at the tine of accident the age of the deceased was 52 years. There is no documentary proof regarding the monthly income of the deceased. P.W.1 Smt. Cheema Devi has stated that the deceased used to give her Rs. 2,500/- per month. She was residing at Nepal while the deceased was doing work in India. The Claims Tribunal held the notional annual income of the deceased at Rs. 15,000/-. After deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was held to be Rs. 10,000/-. Considering the age of the deceased a multiplier of 11 was selected and thus the amount of compensation was calculated as Rs. 1,10,000/-. A sum of Rs. 5,000/- was awarded towards consortium and a sum of Rs. 2,000/- was awarded towards funeral expenses. Thus a total sum of Rs. 1,17,000/- was awarded to the claimants along with pendente lite and future interest at the rate of 9% per annum.

10. The claimants have filed the present appeal u/s 173 of the Motor Vehicles Act, for enhancement of the amount of compensation. Counsel for the Appellants Sri G.B. Pandey has submitted that the income of the deceased has wrongly been calculated to the extent of Rs. 15,000/- per annum. He has further submitted that the selection of multiplier of 11 was also not justified.

11. After giving thoughtful consideration of the submissions of the Appellants, we are of the opinion that the assessment of the income of the deceased by the Tribunal at Rs. 15,000/-per annum on the basis of the notional income requires reconsideration. The notional income of Rs. 15,000/- per annum in the Second Schedule u/s 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case took place in the year 1998. Deceased was aged 52 years at the time of accident. He was skilled labourer (Mason) and he could have easily earned a sum of Rs. 2,500/- per month. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum. After deducting 1/3 amount i.e. Rs. 10,000/- for his own expenses, the annual dependency of the claimants on the income of the deceased comes to Rs. 20,000/-.

12. At the time of accident the age of the deceased was 52 years and as such a multiplier of 10 would be just and proper. Thus by multiplying the amount of annual dependency of Rs. 20,000/- with 10 the amount of compensation comes to Rs. 2,00,000/-. Apart from that the claimants are also entitled to get 2,000/- for the last rites of the deceased and Rs. 5,000/- for loss of consortium. Thus the claimants are entitled to get Rs. 2,00,000 + 2,000 + 5,000 = 2,07,000/- as compensation.

13. Apex Court in the case U.P.S.R.T.C. v. Krishna Bala and Ors. 2006 (64) ALR 771 has highlighted the manner of fixing the appropriate multiplier and computation of compensation and ha observed as under:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by he age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the ependency is expected to last.

14. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper after assessing the over all circumstances of the case. The Apex Court, in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , has observed as under:

8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the

chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters" and the court must try to assess as best as it can the loss suffered.

15. Thus seen from any angle, the compensation of Rs. 2,07,000/-, as stated above, appears to be just and proper compensation in the case.

16. The Tribunal has awarded interest @ 9% per annum. We are of the opinion that interest @ 6% per annum would meet the ends of justice. We with a view to avoid any delay in the computation of the amount of interest by the Claims Tribunal, deem it proper to quantify the amount of interest payable to the claimants at Rs. 10,000/-. Thus, the claimants become entitled to receive a total sum of Rs. 2,07,000 + 10,000 = Rs. 2,17,000/-.

17. In view of above, the appeal filed by the claimants u/s 173 of the Motor Vehicles Act, deserves to be allowed in part. The compensation of Rs. 1,17,000/- awarded by the Tribunal is enhanced to Rs. 2,07,000/- along with a quantified amount of interest of Rs. 10,000/-. The amount awarded by the Claims Tribunal has already been paid to the claimants. The enhanced amount of Rs. 90,000/- along with interest of Rs. 10,000/- total Rs. 1,00,000/- shall be paid by the Respondent No. 1 and Respondent No. 3 to the claimants in the ratio of Rs. 70,000/- and Rs. 30,000/- respectively, within a period of two months from today. Both the claimants shall get the amount in the same ratio as they received earlier.

18. Accordingly, the appeal is partly allowed.

19. No order as to costs.