(2006) 10 UK CK 0011

In the Uttarakhand High Court

Case No : Appeal from Order No. 246 of 2005

Smt. Chhoti Devi and Another — APPELLANT

Vs

National Insurance Company Ltd. and Others — RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2006) 10 UK CK 0011

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

Bench : Division Bench

Advocate : D.C.S. Rawat, on behalf of Lokendra Dobhal, for the Appellant; D.S. Patni and Manish Dalakoti, for the Respondent

Judgement

Rajeev Gupta, C.J.—This is claimants appeal u/s 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal, Chamoli vide Award dated 11-03-2005 passed in Motor Accident Claim Case No. 56 of 2004.

2. The claimants, who are unfortunate parents of deceased Matwar Singh, claimed compensation of Rs. 4,50,000/- for his death in the motor accident on 25-06-2004 when the Jeep bearing registration No. UA07-E-0140, in which he was travelling from Duggada to Gochar, met with an accident due to the rash and negligent driving of its driver resulting in serious injuries to Matwar Singh, who succumbed to those injuries during the course of his treatment in the hospital. The claimants pleaded that their son Matwar Singh used to earn Rs. 2,000/- per month from Agriculture.

3. The driver, the previous and present owner of the offending vehicle Jeep and its insurer contested the claim and denied their liability to pay compensation to the claimants. The insurer of the vehicle took the plea that the Jeep was being plied in breach of the policy conditions and its driver was not holding a valid driving license. The previous owner of the vehicle pleaded that as he had sold the vehicle before the accident, the liability to pay compensation to the claimants, if

any, would be that of his successor. The purchaser of the vehicle (present owner) and its driver took the plea that the accident occurred on account of some sudden mechanical defect in the vehicle and the liability to pay compensation to the claimants, if any, would be that of the insurer of the vehicle.

4. The claimants examined PW1 Smt. Chhoti Devi in support of their claim, whereas the purchaser of the vehicle examined himself as DW1. The insurer of the vehicle, however, did not examine any witness.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that claimants'' son Matwar Singh died on account of the injuries sustained by him in the motor accident on 25-06-2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants.

6. Finding the evidence led by the claimants about the income of the deceased unreliable, the Tribunal awarded a lump sum of Rs. 75,000/- as compensation to the claimants for the death of their son Matwar Singh aged about 19 years. The Tribunal, further, awarded Rs. 2,000/- towards Funeral Expenses and thus, a total sum of Rs. 77,000/- was awarded as compensation to the claimants. The Tribunal, further, directed the insurer of the Jeep to pay interest on the amount of compensation at the rate of 5% per annum from the date of the claim petition.

7. Mr. D.C.S. Rawat, the learned Counsel for the Appellants submitted that the Tribunal has erred in not accepting the claimants ''evidence about the income of the deceased; in awarding a lower amount of Rs. 75,000/- only as lump sum compensation to the claimants for the death of their son; and in awarding interest at the lower rate of 5% per annum only.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned Counsel for Respondent No. 1 National Insurance Company Ltd., on the other hand, supported the Award and submitted that as the claimants could not establish the income of the deceased as pleaded by them, the Tribunal was left with no other opinion but to award lump sum compensation on its own estimate.

9. The findings recorded by the Tribunal that claimants son Matwar Singh died on account of the injuries sustained by him in the motor accident on 25-06-2004; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants have, now, attained finality as the Respondents have not filed any appeal against the Award.

10. Deceased Matwar Singh was aged about 19 years and was students of Class X. The claimants have pleaded that their son Matwar Singh used to earn Rs. 2,000/- per month from Agriculture, it is a matter of common knowledge that in villages the school going boys also work on the fields as agricultural labour. Even otherwise, the Tribunal ought to have assessed the compensation on the basis of the notional income prescribed in the Second Schedule u/s 163-A of the Motor

Vehicles Act instead of awarding a lump sum of Rs. 75,000/- as compensation to the claimants. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 2,000/- per month and Rs. 24,000/- per annum.

11. As deceased Matwar Singh was a school going boy and was living with his parents, he may not be spending much on himself. As such, we deem it proper to deduct a sum of Rs. 4,000/- only as his personal expenses. The claimants'' dependency, therefore, is assessed at Rs. 20,000/- per annum.

12. As the claimants are parents of the deceased, the appropriate multiplier, in view of the dictum of the Apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , would be ''10'' only.

13. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of ''10'', the compensation works out to Rs. 2,00,000/-. By adding the further sum of Rs. 2,000/- awarded by the Tribunal towards Funeral Expenses, the claimants become entitled to receive a total sum of Rs. 2,02,000/- as compensation for the death of their son Matwar Singh in the motor accident.

14. The Tribunal has awarded interest at the rate of 5% per annum, which obviously is on the lower side. Considering the prevalent rate of interest on the bank deposits, we are of the opinion that the interest ought to have been awarded at the rate of 7% per annum. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the same ourselves. The accident took place on 25-06-2004 and the claim petition was filed on 17-08-2004. The impugned Award was passed on 11-03-2005 and the amount of compensation awarded by the Tribunal was deposited by the Insurance Company on 08-07-2005. Considering the above-mentioned relevant factors, we quantify the amount of interest at Rs. 33,000/-.

15. Thus, the claimants become entitled to receive a total sum of Rs. 2,35,000/- (Rupees Two Lakhs and Thirty Five Thousand only) [Rs. 2,02,000/- as Compensation + Rs. 33,000/-towards Interest].

16. For the foregoing reasons, the appeal filed by the Appellants u/s 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 77,000/- (Rupees Seventy Seven Thousand only) awarded by the Tribunal is enhanced to Rs. 2,02,000/- (Rupees Two Lakhs and Two Thousand only) with the further quantified amount of Rs. 33,000/- (Rupees Thirty Three Thousand only) towards Interest. Respondent No. 1 National Insurance Company Ltd. is directed to deposit the balance amount of compensation and interest within a period of three months from today before the concerning Claims Tribunal.

17. No order as to costs.

