(2005) 04 UK CK 0013

In the Uttarakhand High Court

Case No : A.O. No. 499 of 2003

Smt. Harima and others APPELLANT

Vs

Hari Krishna Joshi and another RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Citation : (2005) 3 UC 1883

Hon'ble Judges : Rajesh Tandon, J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : Sri G.B. Pandey, for the Appellant; Sri T.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Rajesh Tandon, J.—This is an appeal against the judgment and award dated 30-08-2003 passed by Motor Accident Claims Tribunal, Pithoragarh (hereinafter referred to as the Tribunal) in Motor Accident Claim Petition No. 94 of 2001 Smt. Harima Sipal and Ors. v. Hari Krishna Joshi and another by which the Tribunal has awarded a sum of Rs. 12,57,944/- as compensation against the opposite party No. 2 along with interest at the rate of 9% per annum from the date of the application till the date of payment. The present appeal has been preferred by the claimants for the enhancement of the compensation.

2. Brief facts of the case giving rise to this appeal are that the Petitioner filed a claim petition before the Motor Accident Claims Tribunal, Pithoragarh for grant of compensation on account of death of Jaspal Singh in a Motor Vehicle Accident. The Petitioners have alleged that on 28-05-2001 the deceased boarded in Jeep No. UP 05/0077 at Dharchula for going to Pithoragarh. The Jeep was being driven rashly and negligently by its driver. As soon as it reached Pingalpani Band, it met with an accident. Jaspal Singh sustained fatal injuries in the accident and he succumbed to the injuries at the spot.

3. According to the claimants, the deceased was employed in State Bank of India. He was 43 years of age and was getting a sum of Rs 16,836/ - as salary.

4. Respondent No. 1 the owner of the offending vehicle Sri Hari Krishna Joshi as well as the Respondent No. 2 the New India Assurance Company have filed their written statements. They have denied that the accident had occurred due to rash and negligent driving of the vehicle in question. However, the Respondent No. 2 (Insurance Company) has admitted that the vehicle in question was insured from 19th November, 2001 to 18th November, 2002.

5. The Tribunal has framed three issues to the following effect: Issue No. 1 relates to the factum as to whether the accident had occurred due to rash and negligent driving of the driver of Jeep No. U.A.-05/0077 on 28-05-2001 at about 6:20 a.m. near Pingalpani, Dharchula-Pithoragarh Motor Marg ?

Issue No. 2 relates to the factum as to whether the driver has valid driving licence ?

Issue No. 3 is with regard to the amount of compensation ?

6. In reply of issues No. 1 and 2, The Tribunal has held that the accident had occurred on account of rash and negligent driving of the driver and the vehicle was insured with the Insurance Company at the time of the accident.

7. In reply of issue No. 3, the Claims Tribunal has held that the deceased was getting a salary of Rs. 16,836/ - per month. He was an officer in the State Bank of India. At the time of the accident, he was aged about 43 years. After deducing of 1/3rd of Rs. 16,836/ - the Claims Tribunal has fixed the dependency of the Petitioner on the income of deceased as Rs. 11,224/ - per month or Rs. 1,34,688/ - per annum. The Claims Tribunal applied a multiplier of "13" and thus calculated the amount of compensation to the extent of Rs. 17,50,944/ -. However, the Claims Tribunal has deducted a sum of Rs. 5,00,000/ - i.e. the amount received by the claimants from State Bank towards the G.P.F. etc. The Claims Tribunal also awarded Rs. 2000/ - for the last rites of the deceased and Rs. 5,000/ - for loss of consortium. Thus the Claims Tribunal has awarded a total sum of Rs. 12,57,944/ - to the claimants.

8. Feeling aggrieved by the impugned judgment and award, the present appeal has been filed by the claimants for enhancement of the amount of award.

9. The findings of the Claims Tribunal on issues No. 1 to 3 have not been disputed before us.

10. The findings of the Tribunal, so far as the factum of accident is concerned has not been challenged either by the Insurance Company or any other person. Thus, findings have become final.

11. The record reveals that the offending vehicle was insured with Respondent No. 2. Paper No. 31 x reveals that the vehicle was insured with the Respondents from 15-11-2000 to 14-11-2001.

12. Learned Counsel for the Appellant Sri G.B. Pandey has submitted that the Claims Tribunal was not justified in deducting Rs. 5,00,000/ - from the total

amount of award, which has been awarded as Provident Fund. Further the multiplier of "13" was not justified according to the age of the deceased and it should have been "15".

13. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the principles have been laid down that the amount received from other sources can not be deducted out of the amount payable under the Motor Vehicles Act as the liability being statutory as the Insurance policy being contractual no deduction can be made. The said findings are quoted below:

The amount under this Act he receives without any contribution. As we have said the compensation payable under the Motor Vehicle Act is statutory while the amount receivable under the life insurance policy is contractual.

14. It is well known maxim ''pacta sunt servanda'' referred to in the Vidya v. L.I.C. of India 2005 (28) 421 means "contracts are to be kept."

15. It has been held in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., following the judgment of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, that the principles of balancing between losses and gains, by reason of death, arrive at the amount of compensation, is a general rule and therefore, amount being social security, the same having been received from other sources cannot be deducted. The Apex Court in the case of Helen C. Rebello v. Maharashtra State Road Transport Corporation (supra) has observed as under:

Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicle Act is uncertain and is receivable only on the happening of the event. Viz. accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy amount is received either by the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives tilt maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured''s death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits etc., though are all a pecuniary advantage receivable by the heirs on account of one''s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicle Act to be termed as ''pecuniary advantage'' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received though contribution of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

16. In view of the facts and circumstance, we are of the opinion that the learned tribunal erred in calculating the compensation. The tribunal should not have deducted the amount received by the Appellant as a G.P.F. amount after the death of the deceased from the compensation.

17. In view of the above, we are of the opinion that no deduction can be made so as to deduct the amount of provident fund from the compensation awarded to the claimant.

18. Undisputedly, on the date of the accident, the age of the deceased was 43 years and thus according to IInd Schedule of M.V. Act, a multiplier of "15" is applicable. The monthly income of the deceased was Rs. 16,836/ - and after deduction of 1/3rd of the same i.e. Rs. 5112/- the dependency of the claimant on the income of the deceased comes to Rs. 11,724 per month or Rs. 140688 per annum. Consequently, the award is modified to the extent that the claimant will be entitled to by multiplying this amount with "15" the total compensation comes to Rs. 21,10,320/ -. The Appellant will also be entitled to get an amount of Rs. 5,000/ - as loss of consortium and Rs. 2,000/ - as funeral expenses. Thus they are entitled to get a sum of Rs. 21,17,320/ - as compensation along with pendentelite and future interest @ 6% per annum. Out of the total amount of compensation Smt. Harima Sipal will get half of the amount. Rest of the amount shall be deposited in some Nationalized Bank in fixed deposit and the names of minor Petitioner in equal shares, for the period till each of them attain the age of majority.

19. Accordingly, the award shall stand modified. There will be no order as to cost.

20. Consequently, appeal is allowed.