

Smt. Kanti Devi, Anita Kumari @ Guddi, Km. Dipti Singh and
Master Naveen Kumar @ Ravi

Motor Accident Claims Tribunal/District Judge and Others	RESPONDENT
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Bench : Single Bench

B.S. Verma, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 3-2-2004, passed by Motor Accident Claims Tribunal/District Judge, Dehradun, in Motor Accident Claims Tribunal Case No. 23 of 2003, Smt. Kanti Devi and Ors. v. Navneet Nagalia and Ors..

2. Brief facts of the case, giving rise to the instant appeal, are that on 7-6-2002 Ram Singh was going to his house situated at Rajeev Nagar on his bicycle. At about 10.30P.M. when he reached near Rishpana bridge by-pass, Tanker bearing No. U.A. 07C-9500, coming from the side of Haridwar, hit a scooter and then also hit the cycle of Ram Singh, due to which Ram Singh sustained grievous injuries on his head and other parts of the body. Injured Ram Singh was taken to Doon Hospital. Thereafter he was referred to C.M.I. Hospital, but ultimately he succumbed to the injuries on 6.7.2002. The report of the accident was lodged on 8.6.2002 at 10.30 A.M. at Police Station Dalanwala. The claimants/Appellants filed claim petition on the ground that the Tanker which hit the cycle of the deceased, was being driven rashly and negligently by its driver. The deceased Ram Singh was aged 50 years at the time of accident and he was working in the N.C.C. Office and was getting Rs. 5974/- per month salary. The claimants claimed Rs. 11,02,000/- as compensation from the opposite parties/Respondents.

3. The opposite party No. 1, owner of the offending Tanker did not file written statement in the claim petition, hence the petition proceeded ex parte against him.

4. The driver of the Tanker contested the claim petition by filing the written statement and alleged that he was driving the Tanker with care and diligence, but the scooterist all of a sudden took a turn on the road, due to which he lost control over the Tanker and hit with the cycle. According to him the accident had taken place due to the negligence on the part of scooterist and the cyclist and he has no liability to pay the compensation.

5. The New India Assurance Company also filed written statement and denied the negligence on the part of the driver of the Tanker. The Insurance Company also alleged that exorbitant amount of compensation has been claimed.

6. The learned Tribunal, on the pleadings of parties framed the following issues in the claim petition-

(1) Whether on 7-6-2002 at about 10.30 P.M. at Lakshmi Road, Dehradun when Ram Singh was going to his house at Rispana Bridge, then deceased Ram Singh was hit by a Tanker No. U.A. 07-C-9500, which was being driven by its driver opposite party No. 2 with rash and negligence, resulting serious injuries on his person and his death ultimately in the hospital?

(2) Whether on account of the accident which took place on the aforesaid date, time and place the legal heirs/claimants of deceased ram Singh are entitled to get the compensation in lieu of the death of Ram Singh?. If so, then from whom?.

7. The claimants in support of this claim got examined Smt. Kanti Devi, as P.W.1 and Satya Pal, eye witness of the accident, as P.W.2. The claimants also filed documents in support of their claim.

8. The opposite parties did not adduce any oral evidence. However, the opposite party No. 2, driver of the Tanker filed his driving license and cover note of the insurance policy in order to show that at the time of accident the offending tanker was insured with New India Assurance Company and the driver was having valid driving license.

9. The learned Tribunal after considering the entire material available on record awarded a sum of Rs. 4,14,000/- as compensation along with interest @ 9% per annum from the date of filing the petition till the date of actual payment, against the New India Assurance Company.

10. Being dissatisfied with the aforesaid amount of compensation, the claimants have preferred this appeal for enhancement of compensation.

11. I have heard Mr. Ramji Srivastava, Advocate for the Appellants, Mr. Piyush Garg, Advocate for Respondent No. 2 and Mr. T.A. Khan Advocate appearing on behalf of Respondent /New India Assurance Company.

12. The learned Counsel for the Appellants has submitted that the claimants have spent a huge amount on the treatment of the deceased but learned Tribunal has not awarded any amount towards medical expenses, loss of love and affection and funeral expenses. He further contended that finding of Tribunal on the point of contributory negligence is also erroneous and the deceased has wrongly been held responsible for negligence up-to the extent of 25%.

13. On the other hand learned Counsel for the New India Assurance Company has submitted that the deceased was treated in Government Hospital and the claimants did not expend any sum on his treatment.

14. The claimant Smt. Kanti Devi has examined herself as P.W.1 and stated on oath that about one lac rupees were spent on the treatment of the deceased. The claimants have filed a large number of receipts and cash memos towards medical expenses. The deceased remained admitted in C.M.I. for a period of about one month. Although the claimant has not proved the medical receipts and expenses, but this fact remains there that the deceased got medical treatment before his death. The Tribunal has not awarded any sum towards medical expenses. In my view a lump sum amount of Rs. 20,000/- towards medical expenses should be awarded to the claimants.

15. The impugned award also shows that the Tribunal has also not awarded any sum towards loss of love and affection and funeral expenses. The claimants are entitled to get a sum of Rs. 5,000/- towards loss of love and affection and a further sum of Rs. 2,000/- under the head of funeral expenses.

16. So far as the ratio of negligence fixed by the Tribunal upto to the extent of 25% on the part of the deceased himself is concerned, this finding is also against the evidence on record. P.W.2, Satya Pal Singh is the eye witness of the accident. He has deposed that on the day of accident he was going to Doiwala from Dehradun riding in a Motorcycle. He was pillion rider in the Motorcycle. When they reached near Rispana bridge at about 10.30 P.M., a cyclist was moving ahead of them. A tanker came there from front side in a high speed and dashed the cyclist on wrong side, due to which the cyclist fell down and sustained injuries. This witness has specifically stated that the cyclist was moving ahead on his left side. Against this evidence the opposite parties did not adduce any evidence and the evidence of this witness remains un-rebutted. Hence, I find that the finding of learned Tribunal on this point is also against the evidence on record and I hold that the driver of offending Tanker was solely responsible for causing the accident and the deceased was not negligence.

17. In this way the amount of compensation payable to the claimants comes to Rs. 4,80,000/- towards loss of active service to be rendered by the deceased upto 60 years; Rs. 72,000/- towards loss of pension after the retirement of the deceased(as has been calculated by the Tribunal); Rs. 20,000/- towards medical expenses; Rs. 5,000/- towards loss of love and affection and Rs. 2,000/- under the head of funeral expenses, total being Rs. 5,79,000/- along with interest @

9% per annum from the date of filing the claim petition till the date of actual payment, payable by the New India Assurance Company.

18. Now the disbursement of the amount of compensation amount the claimants would be as under- Rs. 1,00,000/- each shall be deposited in fixed deposit scheme for a period of three years in the names of claimants Km. Anita Kumari @ Guddi, Km. Dipti and Master Naveen Kumar @ Ravi. The rest of the amount shall be paid to the claimant No. 1.

19. For the discussion made above, the appeal is liable to be partly allowed.

20. The appeal is partly allowed. The impugned judgment and award is modified upto the extent that the claimants/Appellants are entitled to get a sum of Rs. 5,79,000/- along with interest @ 9% from the date of filing the petition till the date of actual payment, instead of Rs. 4,14,000/- as has been awarded by the Tribunal.