

(2008) 11 UK CK 0008

In the Uttarakhand High Court

Case No : Appeal From Order No. 855 of 2006

Smt. Kiran Devi and Others

APPELLANT

Vs

Mahaprabandak, Uttaranchal Sarak Parivahan Nigam and Others

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 1 UC 363

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

Bench : Single Bench

Advocate : I.S. Mehra, for the Appellant; Ashish Joshi, for the Respondent

Judgement

1. This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed by the Appellants against the impugned judgment and award dated 06-11 -2006 passed by Motor Accident Claims Tribunal/District Judge, Nainital in M.A.C.P. No. 12 of 2006, Smt. Kiran Devi and Ors. v. Mahaprabandhak, Uttaranchal Sarak Parivahan Nigam and Ors. whereby the Tribunal awarded a sum of Rs. 1,65,000/- along with interest @ 6% per annum from the date of filing the claim petition till the actual date of payment.

2. Brief facts of the case are that on 13-10-2005 at about 02:00 p.m., the deceased Gokul Singh was going along with his colleague to Kichha on Scooter No. UA04/3328. When they reached near village Gokul Nagar, Thana Kichha, District Udham Singh Nagar, suddenly, a bus bearing registration No. UA03/0107, which was being driven by its driver in a very rash and negligent manner, hit the said scooter, due to which the deceased- Gokul Singh received serious injuries. He was admitted in the Krishna Hospital, Haldwani, but he could not survive and died on 10-11-2005 due to grievous injuries sustained by him. According to the claim petition, he was 40 years of age and used to earn Rs. 8,000/- per month. The claimants are the dependants upon the deceased. Hence, the claimants filed the claim petition for a sum of Rs. 11,60,000/- as compensation.

3. The opposite parties contested the claim petition by filing their written statement before the Tribunal denying the allegations made in the claim petition. On the basis of the pleadings of the parties, the Tribunal has framed relevant issues, which were discussed in a great detail. Thereafter, both the parties led evidence in support of their case. After hearing learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 1,65,000/- along with interest @ 6% per annum from the date of filing the claim petition, till the actual date of payment vide judgment and award dated 06-11 -2006.

4. Feeling aggrieved by the aforesaid judgment and award, the Appellants/claimants preferred this appeal before this Court.

5. Heard Sri I.S. Mehra, learned Counsel for the Appellants/claimants, Sri Ashish Joshi, learned Counsel for the Respondent Nos. 1 and 2 and perused the record.

6. As far as the factum of accident is concerned, the Tribunal has assessed the evidence in detail and has come to the conclusion that the accident has taken place on account of rash and negligence on the part of the driver of the bus No. UA03/0107.1 have also perused the evidence adduced by the parties and I share my views with the findings recorded by the Tribunal and the same is confirmed.

7. Learned Counsel for the Appellants has submitted before the Court that the claimants/Appellants have submitted the medical bills of Rs. 35,000/- before the Tribunal, but the same could not be considered by the Tribunal and held that the deceased has now died and the amount of compensation will be awarded on the basis of multiplier as per schedule.

8. As far as the amount incurred by the claimants in the medical treatment of the deceased- Gokul Singh is concerned, the bills amounting to Rs. 35,000/- were produced by the claimants before the Tribunal. The Tribunal has not disbelieved the genuineness of the bills produced by the claimants, but has discarded them on the baseless grounds. Once the claimants incurred the expenses on the medical treatment of the deceased and she filed the bills pertaining to the medical treatment of the deceased, then it was the duty of the Tribunal to have taken into consideration those bills and awarded the money under the head of the expenses on medical treatment. I therefore, am of the view that the claimants are entitled for a sum of Rs. 35,000/-, as the expenses incurred on the medical treatment of the deceased- Gokul Singh.

9. Learned Counsel for the Appellants has further argued on the point of quantum and has submitted that the Tribunal has committed error while assessing the monthly income of the deceased. Learned Counsel for the Appellants has submitted that according to the claim petition, the monthly income of the deceased was Rs. 8,000/- whereas the Tribunal considered notional income of Rs. 15,000/- per annum. He has further submitted that in the absence of any evidence relating the monthly income of the deceased, the Tribunal has to consider the notional income of Rs. 36,000/- per annum. In order

to support his contention, he has placed before me the decision of the Division Bench of this Court.

10. As far as the amount of compensation to be awarded in favour of the claimants is concerned, it is clear from the evidence available on record that the deceased was 45 years of age at the time of the accident. No cogent and reliable evidence shall be produced in order to show the actual income of the deceased. Therefore, the Tribunal adopted the formula of notional income, but while applying the principle of notional income, the trial court fixed the notional income as Rs. 15,000/- per annum, which appears to be certainly on lesser side. The accident took place in the year 2005 and in view of the Division Bench of this Court on Division Bench of this Court passed on 01-11-2006 in Appeal No. 02 of 2005, Shobhan Singh and Anr. v. New India Insurance Company Ltd. and Anr. has considered the notional income of the deceased as Rs. 36,000/- per annum due to price hike. Hence, in this case the suitable amount of notional income shall be taken as Rs. 36,000/- per annum and after deducting 1/3rd as personal income of the deceased, the financial dependency of the claimants should be assessed as Rs. 24,000/-per annum. The multiplier adopted by the Tribunal in this case is "15" which is absolutely on higher side. In view the dictum of Hon"ble Apex Court in The New India Assurance Company Ltd. v. Smt. Kalpana and Ors. reported in (2007)2 Supreme Court Cases (Cri) 94, T.N. State Transport Corporation v. S. Rajapriya and Ors. reported in (2005) 6 SCC 276 and The Managing Director, TNSTC v. Sripriya and Ors. reported in 2007 (5) Supreme 301 in the instant case, the multiplier cannot travel more than "10". After adopting the multiplier of "10", the amount of compensation comes to Rs. 2,40,000/-.

11. On the basis of the aforesaid calculation, the claimants are entitled for a sum of Rs. 2,75,000/- (240000+35000). Further the Tribunal awarded a sum of Rs. 15,000/- under the different heads (loss of love and affection, mental agony and funeral expenses), I think that this amount is just and proper.

12. On the basis of the aforesaid calculation, the total amount of compensation comes to Rs. 2,90,000/- (275000+15000) along with interest as indicated in the impugned judgment and award.

13. For the reasoning stated above, the appeal is partly allowed. The impugned judgment and award is modified up to the extent that the claimants are entitled to get a sum of Rs. 2,90,000/- instead of Rs. 1,65,000/- along with interest as indicated in the impugned judgment and award.