(2007) 02 UK CK 0002

In the Uttarakhand High Court

Case No : Appeal From Order No. 60 of 2007

Smt. Maya Latwal APPELLANT

Vs

Uttaranchal Rajya Parivahan Nigam and Another RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 2 UC 1069

Hon'ble Judges : Rajeev Gupta, C.J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : I.S. Mehra, for the Appellant; N.S. Pundir, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri I.S. Mehra, Advocate for the Appellant.

Sri N.S. Pundir, Advocate for Respondent No. 1.

They are heard on admission.

2. This is claimant''s appeal filed u/s 173 of the Motor Vehicles Act, for enhancement of the compensation awarded by Motor Accident Claim Tribunal/ Addl. District Judge, Haldwani, District Nainital vide Award dated 22-11-2006 passed in Motor Vehicle Accident Claim Case No. 178 of 2006.

3. Claimant Smt. Maya Latwal, unfortunate widow of deceased Laxman Singh Latwal claimed compensation of Rs. 20,00,000/- for his death in the motor accident on 03-05-2006 when the Roadways Bus bearing registration No. UA 07/3530, in which he was travelling met with an accident and fell in Kosi river due to rash and negligent driving of its driver resulting in unfortunate death of as many as 21 passengers including Laxman Singh Latwal and injuries to 27 passengers. The claimant further pleaded that deceased Laxman Singh Latwal used to earn Rs. 8000/- per month as an Accountant.

4. The owner and the insurer of the offending Bus contested the claim and

denied their liability to pay compensation to the claimant. The Uttaranchal Road Transport Corporation took the plea that as the bus was insured with the Insurance Company, the liability to pay compensation, if any, would be that of the insurance company. The insurer, on the other hand, pleaded that the bus was being plied in breach of the policy conditions and the driver of the bus was not holding a valid driving licence.

5. The Tribunal, on the evidence led by the parties, held that claimant''s husband Laxman Singh Latwal died on account of the injuries sustained by him in the motor accident on 03-05-2006; the accident occurred due to the rash and negligent driving of the driver of the bus; and the insurer of the bus was liable to pay compensation to the claimant.

6. As the salary certificate produced before the Tribunal was not proved by the claimant, the Tribunal assessed the income of the deceased at Rs. 150/- per day; Rs. 4500/-per month and Rs. 54,000/- per annum. After deducting 1/3rd of the said amount as his personal expenses, the claimant''s dependency was assessed at Rs. 36,000/- per annum. By multiplying the annual dependency of Rs. 36,000/- with multiplier of ''17'', the compensation was worked out to Rs. 6,12,000/-. By awarding further sum of Rs. 2,000/- for funeral expenses and Rs. 5,000/- for loss of consortium, the Tribunal awarded a total sum of Rs. 6,19,000/- for the death of the deceased Laxman Singh Latwal. By adjusting Rs. 10,000/-, given by the Uttaranchal Road Transport Corporation to the claimant as ex-gratia compensation, the insurer of the bus was directed to pay a sum of Rs. 6,09,000/- as compensation to the claimants for the death of Laxman Singh Latwal in the motor accident.

7. Sri I.S. Mehra, the learned Counsel for the Appellant vehemently argued that the Tribunal has erred in not accepting the claimant''s evidence about the income of the deceased and in assessing his income at Rs. 4,500/- per month and Rs. 54,000/- per annum. The learned Counsel further submitted that the Tribunal has erred in not awarding any amount towards loss of the estate.

8. Sri N.S. Pundir, the learned Counsel for Respondent No. 1 - Uttaranchal Road Transport Corporation, on the other hand, submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 6,09,000/- to the claimant.

9. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , observed in paras 8 to 10 and 17:

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 therefrom 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.

17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs. 4,50,000 (in round figures).

10. True, the claimant pleaded that deceased Laxman Singh Latwal used to earn Rs. 8000/- per month as an Accountant. Unfortunately, the salary certificate of the deceased could not be proved before the Tribunal. In this state of evidence, the assessment of the income of the deceased by the Tribunal at Rs. 150/- per day; Rs. 4500/- per month and Rs. 54,000/- per annum cannot be found fault with.

11. The dependency of the claimant also has been rightly assessed by the Tribunal at Rs. 36,000/- per annum after deducting 1/3rd of the income of the deceased as his personal expenses.

12. As the deceased was aged about 32-33 years on the date of the accident, the multiplier of ''17'' selected by the Tribunal in view of the dictum of the Apex Court in the case of Section Rajapriya (supra), wherein the Apex Court has selected the multiplier of ''12'' for the deceased, who was aged about 38 years in that case, is rather on the higher side.

13. Thus, seen from any angle, the compensation of Rs. 6,09,000/-awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case. We, therefore, do not find any scope for enhancement of compensation awarded by the Tribunal.

14. The appeal filed by the Appellant u/s 173 of the Motor Vehicles Act for enhancement of the compensation, therefore, is liable to be dismissed and is hereby dismissed summarily.

