

(2007) 09 UK CK 0017
In the Uttarakhand High Court

Smt. Pushpa, Km. Anjali, Master Gaurav and Master Prateek
minors through their mother and natural guardian Smt.
Pushpa

APPELLANT

Vs

Sri Ranjeet Singh, The Oriental Insurance Company Ltd. and
Smt. Vimla Devi

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2007) 09 UK CK 0017

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri B.S. Parihar & Mohd. Azim, counsel for the appellants and Sri Deepak Rawat, counsel for the respondents. This is an appeal filed by the claimants.

2. By the present A.O. filed u/s 173 of the Motor Vehicles Act, 1988, appellant has prayed for enhancement of the award dated 1.3.2006 passed by Motor Accident Claims Tribunal / I-Addl. District Judge, Udham Singh Nagar in Motor Accident Claim Petition No. 151 of 2003 Smt. Pushpa and Ors. v. Ranjeet Singh and Ors., whereby a sum of Rs. 2,51,800/- has been awarded to the claimants-appellants.

3. Briefly stated, a claim petition was filed by the claimants-appellants being Motor Accident Claim Petition No. 151 of 2003 Smt. Pushpa and Ors. v. Ranjeet Singh and Ors. claiming a sum of Rs. 14,51,000/- (Fourteen Lac Fifty One Thousand Only) towards compensation.

4. According to the claimants, on 22.1.2003 at about 5 p.m., when Anil Kumar (hereinafter referred to as the deceased) was standing along with her sister in law on the corner at Bajpur Kaladhungi Road near Village Barhaini and was

waiting for conveyance, all of a sudden a Bus No. DL-1 P/0794, which was coming from the side of Bajpur and being driven rashly and negligently dashed the deceased. In this accident, the deceased received grievous injuries. He was taken to C.H.C. Bajpur for treatment, but seeing the serious condition, the deceased was referred to S.S. Jeena Base Hospital Haldwani, where during the treatment, he died. Report of the said incident was lodged on 27.1.2003. At the time of accident, the deceased was 31 years of age and was earning a sum of Rs. 4,000/- per month as he was a Conductor in Bus No. U.A. 01/1212. The deceased is survived by his wife-Smt. Pushpa and three children namely Km. Anjali aged about 6 years, Master Gaurav aged about 5 years, Master Gaurav aged about 3 years.

5. Rajeet Singh owner of the Bus No. D.L.P. 0794 has contested the case by filing a written statement, wherein it has been stated that the amount claimed towards compensation is excessive and at the time of accident, the Bus in question was insured with Oriental Insurance Company Limited and the Oriental Insurance Company is liable to pay the compensation. Further it has been stated that the driver of the Bus was an expert driver and was having valid driving licence, which is valid upto 12.7.2004.

6. Oriental Insurance Company has also filed a written statement - paper No. 13 Kha, wherein it has been stated that it is essential for the owner of the Bus in question to prove that at the time of accident driving licence of the driver of the bus, registration certificate, insurance and other relevant papers regarding Bus were valid. Apart from that it has also to be proved that the premium had been deposited by the owner of the Bus. It has also been stated that the driver of the Bus was driving the said Bus unauthorisedly. Thus, the Insurance Company is not liable to pay any compensation.

7. On the pleadings of the parties, the Claims Tribunal has framed following issues:

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2& ;kphx.k fdruk izfrdj izkIr djus dk vf/kdkjh gS vkSj og fdl i{kdkj }kjk ns; gksxk A

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8. On behalf of the claimants, Smt. Pushpa, Km. Basanti Devi and Sri Sunil Kumar Malhotra have been examined as P.W. 1, P.W. 2 and P.W. 3 respectively. Towards documentary evidence, the claimants have filed copy of first information report, copy of Registration Certificate of the Bus No. D.L. 1 P/0794, copy of the Fitness Certificate of Bus No. D.L. 1P/0794, copy of the cover-note, copy of the Driving Licence of the Driver of Bus No. D.L. 1 P/0794, certified copy of the First

Information Report dated 27.1.2003, certified copy of the Post Mortem Report of Anil Kumar Chauhan, certified copy of the charge-sheet dated 5.4.2003 and Salary Certificate.

9. On behalf of the opposite party no. 1 certified copies of Permit, Cover Note and Driving Licence of the Driver have been filed.

10. While deciding the Issue No. 1 as to whether on 22.1.2003 at about 5.00 p.m. near Village Barhaini at Bajpur Kaladhungi Road, due to rash and negligent driving of the driver of Bus No. D.L. 01P/0794 accident took place, in which Sri Anil Kumar died, the claims tribunal has relied upon the First Information Report, where it has been mentioned that the deceased was waiting for conveyance at the corner of the road near Village Barhaini, all of a sudden a Bus No. D.L.01P/0794, which was coming from the Bajpur side and being driven rashly and negligently dashed the deceased Anil Kumar @ Pappu and the deceased became seriously injured. Further the claims tribunal has relied upon the Post Mortem Report 14Ga/5 & charge sheet: 14Ga/7, which shows that the deceased Anil Kumar died due to rash and negligent driving of the Driver of Bus No. D.L. 1P/0794. Further reliance has been placed on the statement of P.W.2-Basanti Devi-ocular witness, who has also stated the same fact that due to rash and negligent driving of the driver of Bus No. DL 1 P/0794, the accident took place, in which the deceased Anil Kumar died. Relying upon the aforesaid statement as well as evidence available on the record, the claims Tribunal has recorded a finding that the accident took place due to rash and negligent driving of the driver of Bus No. DL- 1 P/0794 in which Sri Anil Kumar received grievous injuries and on account of the injuries received in the accident, he died. This issue has been decided in favour of the claimant.

11. I do not find any error or infirmity in the aforesaid finding and the same deserves to be confirmed.

12. While deciding the Issues No. 2 and 3 as to what amount of compensation the claimants are entitled to receive and from whom and as to whether the claimants are entitled to get any other relief, the claims tribunal has relied upon Paper No. 6Ga/4 Registration Certificate, Paper No. 6Ga/5 Fitness Certificate, Paper No. 6Ga/6 Insurance Policy and Paper No. 6Ga/7 Driving Licence of the driver of the Bus, certified copy of the Registration Certificate Paper No. 16Ga/2, certified copy of the Insurance Cover Note Paper No. 16Ga/3, certified copy of the Driving Licence of the driver Paper No. 16Ga/4, which were valid at the time of the accident. Further the claims tribunal has assessed the age of the deceased between the age group of 31 to 35 years after relying upon the Post Mortem Report and Transfer Certificate of the deceased. Further the claims tribunal has assessed the income of the deceased as Rs. 1800/- per month as notional income of the deceased. The claims tribunal has deducted 1/3rd of the personal expenses from that amount. Then the dependency comes to Rs. 1200/- per month (Rs. 14,400/- per annum). According to the age of the deceased, multiplier of 17 has been selected. Multiplying the annual dependency with 17,

the amount of compensation comes to Rs. 2,44,800/-. Apart from that the claims tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- for loss of consortium. Thus, a total sum of Rs. 2,51,800/- has been awarded to the claimants towards compensation along with simple interest @ 6% per annum. The claims tribunal has imposed the liability to pay compensation on the Insurance Company as the Bus in question was insured with the Oriental Insurance Company.

13. Counsel for the appellant has submitted that the claims tribunal has taken meager amount towards income and has referred Smt. Godavari Devi and Ors. v. U.P. State Road Transport Corporation and Anr. 2006 (2) U.D. 665, notional income has been treated to be 30,000/- keeping in view the depreciation in the purchase value. The observations of the Division Bench are quoted below:

12. ...That apart, the notional income of Rs. 15,000/- per annum in the Second Schedule u/s 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident, in the present case, took place in the year 2003. If the depreciation in the purchase value of the rupee during the period between 1994 to 2003 is taken into account, the notional income of Rs. 15,000/- per annum prescribed in the year 1994 would come, in the year 2003 to Rs. 30,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000/- per annum.

14. Aforesaid case has been upheld by the Apex Court dismissing the SLP Civil No. 3720 of 2007 on 8.3.2007.

15. In view of the above, in place of Rs. 14,400/- per annum, annual dependency is taken as Rs. 20,000/- per annum in view of the aforesaid judgment, which has been confirmed by the Apex Court. So far as multiplier is concerned, the same is modified to 15 in place of 17. Compensation paid for funeral expenses as well as for loss of consortium shall remain the same. So far as the interest part is concerned, the same shall be payable at the rate of 7.5% percent per annum in place of 6% per annum. Thus, the claimant will be entitled to get a total sum of Rs. 3,07,000/- along with simple interest @ 7.5% per annum.

16. Consequently, the Appeal succeeds and is allowed. ; No order as to costs.