
(2007) 12 UK CK 0040

In the Uttarakhand High Court

Case No : Appeal from Order No. 402 of 2007

Smt. Rajvindar Kaur and Others

APPELLANT

Vs

New India Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 29-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2008) 1 UC 538

Hon'ble Judges : Rajeev Gupta, C.J.; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Arvind Vashishth and H.M. Bhatia, for the Appellant; Piyush Garg, on behalf of B.K. Gupta, for New India Insurance Company Ltd., for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Mr. Arvind Vashishth and Mr. H.M. Bhatia, Advocates for the Appellants.

Mr. Piyush Garg, Advocate on behalf of Mr. B.K. Gupta, Advocate for Respondent No. 1 - New India Insurance Company Ltd.

2. They are heard on admission.

3. This is claimants' appeal filed u/s 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded by Motor Accident Claims Tribunal, Pauri Garhwal vide Award dated 10-04-2000 passed in Motor Accident Claim Case No. 103 of 1998.

4. The claimants, who are unfortunate widow and minor daughters of deceased Kalyan Singh, claimed compensation of Rs. 56,20,000/- by filing a claim petition u/s 166 of the Motor Vehicles Act, 1988 for the death of Kalyan Singh in the motor accident on 24-06-1998, when the private Taxi (Tata Sumo) bearing registration No. UP20-C-2328, on its way from Kotdwar to Nazibabad, was dashed by the offending vehicle Bus bearing registration No. UP06-1324 resulting

in the instantaneous death of Kalyan Singh on the spot itself. The claimants pleaded that deceased Kalyan Singh used to earn Rs. 40,000/- per month from his business.

5. The owner and insurer of the offending vehicle Bus contested the claim and denied their liability to pay compensation to the claimants. The owner of the Bus took the plea that the driver of the Bus was not responsible for the accident and the liability to pay compensation, if any, was that of the Insurance Company, as the vehicle was insured. The insurer of the Bus, on the other hand, pleaded that the driver of Tata Sumo was responsible for the accident; the Bus was being plied in breach of the policy conditions; and the driver of the Bus was not holding a valid driving license at the time of the accident.

6. The claimants examined PW1 Smt. Rajvinder Kaur and PW2 Napendra Singh in support of their claim. The insurer and the owner of the offending vehicle Bus, however, did not examine any witness in rebuttal.

7. The Tribunal, on a close scrutiny of the evidence led before the Tribunal, held that deceased Kalyan Singh died on account of the injuries sustained by him in the motor accident on 24-06-1998; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle, Bus; and the insurer of the offending vehicle Bus liable to pay compensation to the claimants.

8. The Tribunal, on a thorough consideration of the evidence led by the claimants about the income of the deceased, including the Income Tax Returns for the Assessment Years 1996-97, 1997-98 and 1998-99, assessed the income of the deceased at Rs. 1,20,000/- per annum. By deducting reasonable amount towards personal expenses of the deceased, the claimants' dependency was assessed at Rs. 76,000/- per annum. By multiplying the annual dependency of Rs. 76,000/- with the multiplier of "12", the compensation was worked out to Rs. 9,12,000/-. By awarding further sum of Rs. 10,000/- under other permissible Heads, the Tribunal awarded a total sum of Rs. 9,22,000/- as compensation to the claimants for the death of Kalyan Singh in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 9,22,000/- at the rate of 12% per annum from the date of the filing of the claim petition till actual payment.

9. Mr. Arvind Vashishth and Mr. H.M Bhatia, the learned Counsel for the Appellants vehemently argued that the Tribunal has erred in assessing the income of the deceased at Rs. 1,20,000/- per annum only and in awarding low compensation of Rs. 9,22,000/- only.

10. Mr. Piyush Garg, the learned Counsel for Respondent No. 1 New India Insurance Company Ltd., on the other hand, supported the Award and submitted that the compensation of Rs. 9,22,000/-, awarded by the Tribunal, cannot be termed as "inadequate" so as to warrant enhancement in this appeal.

11. In a motor accident claim case what is important is that the compensation to

be awarded by the Courts/Tribunal should be just and proper compensation in the facts and circumstances of the case and should not be a bonanza arising out of the death of the deceased in the motor accident. The Apex Court, in the case of The Divisional Controller KSRTC v. Mahadeva Shetty and Anr. reported in AIR 2003 SCW 3797, observed in para 15:

15. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrariness. If it is not so, it cannot be just. See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, .

12. The Apex Court in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , observed in paras 8 to 10:

8. The assessment of damages to compensate the dependants 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 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 capitalized 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.

13. True, the claimants pleaded that deceased Kalyan Singh used to earn Rs. 40,000/- per month from his business. The above pleading stood contradicted by the Income Tax Returns filed by the claimants themselves before the Tribunal, wherein income of Rs. 94,540/- was disclosed for Assessment Year 1996-97; Rs. 1,07,346/- for the Assessment year 1997-98; and 1,40,740/- for the Assessment Year 1998-99, as the annual income on the basis of the monthly income of Rs. 40,000/- would come to Rs. 4,80,000/- per annum, which was not disclosed in the Income Tax Returns for any of the above-mentioned Assessment Years. In this state of evidence, we are satisfied that the Tribunal has rightly assessed the income of deceased Kalyan Singh at Rs. 1,20,000/- per annum. Even otherwise, if the income, shown by the deceased himself in his above-mentioned Income Tax Returns, is taken into consideration, the average of the income of the above-mentioned three Assessment Years would be less than Rs. 1,20,000/- per annum. That apart, the adjustment towards payment of income tax by the deceased out of the income for the relevant year would further reduce the income of the deceased shown in the Income Tax Return. We, therefore, do not find any scope for interference so far as the assessment of the income of the deceased by the Tribunal is concerned.

14. The dependency of the claimants also, in our opinion, has been rightly assessed by the Tribunal at Rs. 76,000/- per annum by deducting about 1/3rd of Rs. 1,20,000/- towards the personal expenses of the deceased, who was running his own business and must be spending the substantial amount of his income on himself.

15. The learned Counsel for the Appellants have not rightly made any grievance about the selection of multiplier of "12" by the Tribunal, as in view of the dictum of the Apex Court in the case of S. Rajapriya (supra), the multiplier of "12", selected by the Tribunal in the facts and circumstances of the present case including the age of the deceased and the claimants and the amount of dependency assessed, is appropriate.

16. The interest awarded by the Tribunal at the rate of 12% per annum is rather on the higher side in view of the prevalent rate of interest on Fixed Deposit in the Nationalised Banks.

17. For the foregoing reasons, we do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of the income of the deceased and the dependency of the claimants assessed by the Tribunal or the multiplier selected.

18. The appeal, therefore, is liable to be dismissed and is hereby dismissed summarily.