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In the Uttarakhand High Court

Case No : A.O. No. 49 of 2004

Smt. Shamim and Others APPELLANT

Vs

New India Assurance Co. Ltd. and Another RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163B

Citation : (2007) ACJ 758 : (2005) 2 AWC 1486

Hon'ble Judges : Rajesh Tandon, J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : Zafar Ullah Siddiqui, for the Appellant; T.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—The present appeal has been filed against the judgment and award dated 12.11.2003, passed by the Motor Accident Claims Tribunal, Haldwani, District Nainital, dismissing the claim petition of the appellants.

2. Briefly stated the facts giving rise to the present appeal are that the appellant-petitioners have filed a claim petition before the Motor Accident Claims Tribunal, Haldwani for grant of compensation on account of death of Mr. Niyaj Ahamad. The petitioners alleged that Niyaj Ahamad was employed as a Bus Conductor on Bus No. DL 1 P. 1706. On 1.5.2002 at about 9.30 a.m. when the bus reached at Jhankaya Bus Stop, Khatima, he climbed on the roof of bus to download the luggage of a passenger. When he was coming down from the roof of the bus, the driver of the bus started the bus and Niyaj Ahamad fell down from the stairs of the bus. He sustained head injury in the accident and he was rushed to the Civil Hospital, Khatima from where he was referred to Bareilly but he succumbed to the injuries on the way when he was being carried to Bareilly Hospital. The deceased was earning a sum of Rs. 3,900 per month and the claimants claimed a sum of Rs. 6,80,000 as compensation.

3. The claim petition was contested by the opposite parties. The New India

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Assurance Company filed written statement and denied the allegations made in the petition. The insurance company alleged that the driver had no valid driving licence. Sri Shakil Ahamad, owner of the bus also filed his written statement and admitted the accident and death of the deceased due to the accident. However, he alleged that the compensation claimed is highly exaggerated. The bus was comprehensively insured with the New India Assurance Company and the insurer -of the bus is liable to pay compensation, if any, to the petitioners.

4. On the pleadings of the parties the Claims Tribunal framed as many as four issues. Issue No. 1 was as to whether the accident took place due to negligent act by the driver of the bus. Issue No. 2 was regarding compensation. Issue No. 3 was regarding the insurance of the bus with the opposite party No. 1 and issue No. 4 was regarding relief to the petitioners.

5. The claimants examined P.W. 1 Smt. Shamim and P.W. 2 Sri Aftab Ahamad to prove their claims. The opposite parties examined Mohd. Kasim as D.W. 1 who was the driver of the bus at the time of accident. The Claims Tribunal has held that no documentary evidence has been filed by the claimants to prove that the accident actually occurred. No report of the accident was lodged in the police station and doctor of the hospital has not been examined. Thus the Claims Tribunal decided issue No. 1 in negative and against the petitioners. In his findings on issues No. 2 and 3, the Claims Tribunal has held that the driver of the bus had valid driving licence and at the time of accident the bus was insured with the New India Assurance Company. However, on the basis of findings on issue No. 1 the claim petition was dismissed. Feeling aggrieved the present appeal has been filed by the claimants-appellants.

6. We have heard the learned counsel for the parties and have perused the evidence on record.

7. In the present case the Claims Tribunal has dismissed the petition of the appellants on the ground that neither report of the accident was lodged in the police station nor any panchayatnama nor post-mortem examination report has been filed. Proceedings of Motor Accident Claims Tribunal are the summary proceedings and strict rule of proof is not required to be adopted in the case of motor accident. In the instant case the petitioners have filed eight papers per list 6-C. Paper No. 6-C/2 is the medical slip of P.H.C. Khatima which clearly shows that the deceased Niyaj Ahamad was admitted to that P.H.C. on 1.5.2002 due to accidental injuries and Police was also informed. The Medical Officer of that P.H.C. has made endorsement to this effect on the medical slip. The Medical Officer referred the injured to the District Hospital or any Higher centre for further treatment and advice. Endorsement of the doctor to this effect is also on the slip. This documentary evidence has not been denied or rebutted by the opposite parties. This medical slip clearly goes to show that injured Niyaj Ahamad was admitted to the P.H.C. Khatima on 1.5.2002 due to accidental injuries and Police was also informed by the Medical Officer in this, respect. Further there is oral evidence to prove the fact that Niyaj Ahamad sustained fatal

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injuries in the accident and died due to such injuries.

8. P.W. 2 Aftab Ahamad was examined to prove the fact of accident. He stated in his statement that on 1.5.2002, he was going to Melaghar from Sitarganj by Bus No. DL IP/1706. At about 9.30 a.m. the bus reached Jhankiya Stoppage, the conductor of the bus Sri Niyaj Ahamad climbed on the roof of the bus to unload luggage of a passenger. After unloading the luggage he was coming down from the roof of the bus by staircase but the driver suddenly started the bus and Niyaj Ahamad fell down from the stairs due to the jerk. He was taken to the P.H.C. Khatima and was admitted there. He was serious and doctor of the P.H.C. referred him to the higher centre. He was taken to Dhanwantari Hospital, Bareilly but he succumbed to the injuries sustained in the accident and doctors declared him dead.

9. P.W. 1 Smt. Shamim widow of deceased Niyaj Ahaamad also stated that her husband died on the way to Bareilly due to the injuries sustained in the accident. She is not an eyewitness of the accident and she is a hearsay witness.

10. The opposite parties have not disputed that the death of Sri Niyaj Ahamad was caused due to the injuries sustained in the accident. The opposite parties examined Mohamad Kasim D.W. 1 who was the driver of the bus on the date of accident. He stated on oath that deceased Niyaj Ahamad was the conductor of the bus. On 1.5.2002 at about 8.30 a.m. the bus was stopped at Jhankiya bus stop. The conductor of the bus climbed on the roof of the bus to unload luggage of some passenger, when he was unloading the luggage some miscreant rang the bell and he started the bus due to which the conductor fell down from the roof of the bus. He was taken to the Khatima Hospital from where he was referred to higher institute but he succumbed to the injuries on the way when he was carrying to Bareilly.

11. Thus this witness supported the case of the claimant that the death of Niyaj Ahamad was caused due to the injuries sustained in the motor vehicle accident occurred on 1.5.2002 at 8.30 a.m. at Jhankiya bus stop. There is no reason to disbelieve the statement of P.W. 2 Aftab Ahamad who was also sitting in the bus in question at the time of accident and D.W. 1 Mohmad Kasim who at the relevant time was employed as driver of the bus involved in the accident. Thus the petitioner-claimant had fully proved that the deceased Niyaj Ahamad died due to the injuries sustained in a motor vehicle accident on 1.5.2002 at 8.30 a.m. at Jhankiya bus stop due to rash and negligent driving by the driver of the bus.

12. The Claims Tribunal has dismissed the petition of the claimant on the ground that no report of. the accident was lodged in the Police station and post-mortem of the dead body was not "done. The Claims Tribunal also held that there were some contradiction in the statement of P.W. 2 and D.W.I. The contradictions on which the Claims Tribunal based his findings for dismissal of the claim petition are that one P.W. 2 Aftab Ahamad has stated that the deceased died on the way

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and doctors of Dhanwantri Hospital, Bareilly declared him dead. D.W. 1 Mohd. Kasim stated that he was carrying the conductor to Bareilly and he died on the way. In our opinion this contradiction does not make the case of the claimants unbelievable. Either the deceased died on the way or at the hospital, it is clear that he was declared dead at the hospital and he was not treated any more at Bareilly hospital. However, the petitioner has fully proved by the documentary evidence as well as by the oral evidence that the death of Niyaj Ahamad was caused due to the injuries sustained in the accident on 1.5.2002 at 6.30 a.m. involving bus No. DL IP -1706 and as such the learned Claims Tribunal was not justified to decide issue No. I in negative against the petitioner.

13. We, therefore, have no hesitation in coming to the conclusion that the accident was caused due to rash and negligent driving by the driver of Bus No. DL IP -1706 on 1.5.2002 at 8.30 a.m. at Jhankiya Bus Stop and Niyaj Ahamad died due to the injuries sustained in the accident. The finding of the Claims Tribunal on issue No. 1 are therefore, set aside.

14. So far as the findings on issue Nos. 2 and 3 are concerned the Claims Tribunal has held that the Bus involved in the accident was validly insured with opposite party No. 1 at the time of accident and the driver of the bus had valid driving licence. These issues have not been disputed before us by any of the party.

15. So far as the amount of compensation is concerned, according to P.W. 1 Smt. Shamim the deceased was getting Rs. 4,000 per month as salary. D.W. 1 Mohd. Kasim who was the driver of the bus stated that he was getting Rs. 5,000 as salary and the conductor of the bus was getting Rs. 3,500 as salary and Rs. 400 as D.A. The respondents have not disputed this amount of salary. Thus we hold that the deceased was getting Rs. 3,900 per month or Rs. 46,800 per annum. One-third of this amount has to be deducted for the own expenses of the deceased, if he would have been alive, and thus the annual dependency of the claimants on the income of the deceased comes to Rs. 31,200. The age of the deceased at the time of accident was 25 years and thus according to the Second Schedule of M.V. Act a multiplier of 18 should be applied to the present case.

16. The learned counsel for the insurance company has submitted that in view of the observations made by the Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, a maximum multiplier of 16 should have been adopted. In the case of U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. 1993 ACJ 831 the Apex Court has held that under Schedule II of M.V. Act, the maximum multiplier is 18 and it should be adopted.

17. The Apex Court observed as under :

"The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by the Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to

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determination of compensation is the insertion of Sections 163A and 163B in Chapter XI entitled ''Insurance of Motor Vehicles Against Third Party Risks. Section 163A begins with a non-obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured as the case may be. Now if we turn to the Second Schedule, we find a Table fixing the mode of calculation of compensation for third party fatal accident injury claims arising out of the accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this Table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ."

18. This view was also reiterated in the case of Manju Devi and Anr. v. Musafir Paswan and Anr. 2005 ACJ 99.

19. In view of above, we are of the opinion that a multiplier of 18 should be applied to the present case. Thus by multiplying the annual dependency of Rs. 31,200 with 18 the compensation comes to Rs. 5,61,600. Besides this the petitioners are also entitled to get Rs. 2,000 as funeral expenses, Rs. 2,500 for the loss of estate and Rs. 2,500 for loss of consortium. Thus the petitioners are entitled to get Rs. 5,67,600 as compensation, which we round up to Rs. 5,68,000 with pendente lite and future interest at the rate of 6% per annum. The Insurance Company shall preferably pay the amount of the, award.

20. Smt. Shamim claimant No. 1 shall get one-third of the total amount while rest of the amount shall be divided equally in the remaining claimants. The amount payable to the minors shall be deposited in fixed deposit in some nationalised bank till the time they attain the age of majority.

21. Accordingly the appeal is allowed. There will be no order as to costs.

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