

(2006) 11 UK CK 0043
In the Uttarakhand High Court

Smt. Sundari Devi, Km. Monika, Km. Sonika and Smt.
Sharda Devi

APPELLANT

Vs

National Insurance Co. Ltd., Pradeep Singh, Brigadier/
commanding Officer and Union of India (UOI)

RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2006) 11 UK CK 0043

Hon'ble Judges : Rajeev Gupta, C.J.;Rajesh Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—This appeal is against the Award dated 9.11.2004, passed by the Motor Accident Claims Tribunal, Rudraprayag for enhancement of the amount of award.

2. The claimants/ appellants preferred a claim petition u/s 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Virendra Singh, who was employed as Naik in the Indian Army, in a motor vehicle accident. According to the claimants on the fateful day on 31.8.2003 at about 10.20 AM he was travelling by Army Jipsy No. 99-B/66041 along with other officers and Jawans. The jeep was being driven by Colonel G. K. Chamoli. The Jipsy was collided with Jeep No. R.J. 29/P-478. The claimants have alleged that the accident took place due to rash and negligent driving by civil Jeep No. R.J. 29/P-478. Sri Virendra Singh sustained fatal injuries in the accident and he died in the way to hospital. According to the claimants at the time of accident the deceased was 31 years of age. He was employed as Naik in the Army and was getting Rs. 12,000/- per month.

4. The respondent No. 3 and 4, Brigadier/ Commanding Officer, 5 Mahar Regiment have filed their written statement and submitted that the date of birth of the deceased was 14th July 1972 and his monthly income was Rs. 6,500/-.

5. Respondent No. 1 the National Insurance company has filed the written statement and has submitted that the accident had taken place due to contributory negligence of both the drivers, therefore, owners of both the jeeps are liable to pay compensation. The Insurance company has also submitted that the driver of the jeep had no valid driving licence and as such the insurer is not liable to pay compensation.

7. The claimants examined P.W.1 Sundari Devi, and have filed the copy of the post mortem report and papers of Civil Jeep No. JR 29/P-478, copy of F.I.R. copy of G.D. etc. The papers of Army jeep were also filed.

8. On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to the contributory negligence of both the Jeep drivers.

9. So far as the compensation is concerned the Tribunal has recorded the finding that keeping in view the standard of living and income of the deceased the Army has taken insurance of his life for Rs. 3,75,000/-. Therefore, the claims Tribunal has assessed compensation of Rs. 3,75,000/-. As the liability of Civil Jeep was held to be 50% therefore, the insurance Company was held liable to pay half of the compensation i.e. Rs. 1,87,500/-. Out of that amount one third amount i.e. Rs. 62,500/- was further deducted for self expenses of the deceased and thus a compensation of Rs. 1,25,000/- was assessed.

10. The claimants have filed the present appeal u/s 173 of the Motor Vehicles Act, for enhancement of the amount of compensation. Counsel for the appellants Sri R.P. Nautiyal has submitted that the Claims Tribunal was not justified at all to assess the compensation on the basis of insurance policy and not on the basis of monthly income of the deceased. No multiplier was selected and the Claims Tribunal has passed the impugned judgment and award merely on the basis of surmises and conjunctures.

11. After giving thoughtful consideration of the submissions of the appellants, we are of the opinion that the assessment of the income of the deceased by the Tribunal on the basis of the insurance policy requires reconsideration.

12. The accident in the present case took place in the year 2003. Deceased was aged 31 years at the time of accident. He was Naik in the Indian Army. Although the Claimants have not submitted the salary certificate of the deceased but the respondents No. 3 and 4 in their written statement have stated that the salary of the deceased was Rs. 6,500/- per month. Respondent No. 3 Brigadier, 5 Mahar Regiment was the drawing and disbursing authority of the deceased therefore, the monthly salary as shown by him in the written statement shall be assumed to be correct. Thus we are of the opinion that the income of the deceased was Rs. 6,500/- per month. After deducting 1/3 amount i.e. Rs. 2200/- for his own expenses the dependency of the claimants on the income of the deceased comes to $6,500 - 2200 = \text{Rs. } 4,300/-$ per month or $\text{Rs. } 4,300 \times 12 = \text{Rs. } 51,600$ per annum.

13. At the time of accident the age of the deceased was 31 years and as such a multiplier of 12 would be just and proper. Thus by multiplying the amount of annual dependency of Rs. 51,600/- with 12 the amount of compensation comes to Rs. $51,600 \times 12 = \text{Rs. } 6,19,200/-$. Apart from that the claimants are also entitled to get Rs. 5,000/- for the last rites of the deceased and Rs. 5,000/- for loss of consortium and Rs. 5,000/- for loss of estate. Thus the claimants are entitled to get Rs. $6,19,200 + 5,000 + 5,000 + 5,000 = \text{Rs. } 6,34,200/-$ as compensation.

14. Apex Court in the case *U.P.S.R.T.C. v. Krishna Bala and Ors.* [2006 (64) ALR 771] has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

15. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper after assessing the over all circumstances of the case. The Apex Court, in the case of *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, , has observed as under:

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 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.

16. Thus seen from any angle, the compensation of Rs. 6,34,200/-, as stated above, appears to be just and proper compensation in the case. As the accident took place due to contributory negligence by the drivers of both the jeeps, therefore, respondent No. 1 National Insurance Co. Ltd. and respondent No. 4 Union of India each shall pay half of the amount of compensation.

17. The Tribunal has not awarded any interest. We are of the opinion that interest @ 7% per annum would meet the ends of justice.

18. In view of above, the appeal filed by the claimants u/s 173 of the Motor Vehicles Act, deserves to be allowed. The compensation of Rs. 1,25,000/- awarded by the Tribunal is enhanced to Rs. 6,34,200/- along with pendente lite and future interest @ 7% per annum.

19. Respondent No. 1 National Insurance co. Ltd. and Union of India each shall pay Rs. 3,17,100/- each along with interest. Out of the total amount of compensation and interest Smt. Sundari Devi will get half of the amount. Rest of the amount shall be equally distributed amongst three other claimants. The amount of the shares of minors shall be deposited in fixed deposit in some nationalized bank for the period of their attaining the age of majority.

20. Accordingly, the appeal is allowed.

21. No order as to costs.