(2006) 10 UK CK 0032

In the Uttarakhand High Court

Case No : Appeal from Order No. 410 of 2005

Smt. Sureshi Devi and others APPELLANT

Vs

National Insurance Company Ltd. and Others RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2007) 1 UC 625

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

Bench : Division Bench

Advocate : Sri Pankaj Purohit, for the Appellant; Sri D.S. Patni, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri Pankaj Purohit, counsel for the Appellants and Sri D.S. Patni counsel for Respondent No. 1.

2. This appeal is for enhancement of the amount of Award dated 15-6-2005, passed by the Motor Accident Claims Tribunal, Chamoli.

3. The 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 Laxmi Prasad in a motor vehicle accident. According to the claimants on the fateful day on 5-7-2003 the deceased was going to Thirpak from Kandai by Tata Summo No. U.P. 07 C-6593. The vehicle met with accident at Machchidhar and fell into a ditch. Deceased Laxmi Prasad sustained fatal injuries in the accident and he died instantaneously. According to the claimants, the deceased was a Mason, he was also doing horticulture work and was also selling milk. His monthly income was Rs. 9,500/-. The claimants claimed rupees twenty one lakhs as compensation.

4. The Respondent No. 1, filed written statement and submitted that at the time of accident the vehicle was not being driven according to the terms and conditions of the insurance policy. The vehicle has no valid registration

certificate, fitness certificate and permit. The driver of the vehicle has no valid driving licence.

5. Respondent No. 2 did not appear before the Claims Tribunal despite of sufficient service.

6. Respondent No. 3 filed his written statement and has submitted that he is registered owner of the vehicle. The vehicle has valid registration certificate, permit, fitness certificate and the driver of the vehicle has valid driving licence. He alleged that the vehicle was comprehensively insured with Respondent No. 1 at the time of accident and Respondent No. 1 is liable to pay compensation.

7. The claimants examined P.W. 1 Smt. Sureshi Devi, P.W. 2 Devi Prasad and P.W. 3 Shiraj Singh and have filed copy of the G.D. of Patwari, Mankhi, Post mortem report and copy of Pariwar Register. Respondent No. 3 filed Insurance cover note, registration certificate of the vehicle, fitness certificate, permit and licence of the driver.

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 rash and negligent driving of the Tata Summo Jeep driver.

9. So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 24 years, he was unmarried. No reliable evidence has been adduced by the claimants regarding the income of the deceased, therefore, the Claims Tribunal has held the notional income of the deceased as Rs. 3,000/- per month or Rs. 36,000/- per annum. Rs. 12,000/- has been deducted from the annual income for the own expenses of the deceased. Thus the annual dependency of Rs. 24,000/- per annum was assessed. The deceased was unmarried and claimants are the mother and sisters of the deceased, therefore, multiplier of 11 was selected according to the age of the mother of the deceased. Thus a compensation of 24,000 x 11 = 2,64,000/- has been worked out by the Tribunal. The Claims Tribunal also awarded Rs. 2000/- for the last rites. Thus a total compensation of Rs. 2,66,000/- was awarded to the claimants. The Claims Tribunal has also awarded interest at the rate of 5% per annum from the date of institution of claim petition till actual payment.

10. Feeling aggrieved the claimants have filed the present appeal for enhancement of the amount of compensation u/s 173 of the Motor Vehicles Act. Sri Pankaj Purohit Counsel for the Appellants has submitted that the income of the deceased has wrongly been calculated at Rs. 3,000/- per month. He has further submitted that the selection of multiplier of 11 was also not justified as the same was on the lower side.

11. P.W. 1 Smt. Sureshi Devi, mother of the deceased has stated on oath that his son was earning Rs. 5,000/- per month by selling milk and by horticulture work. He was also doing work of mason and was earning Rs. 150/- per day. In her

cross-examination she has stated that her son used to go to school and was also doing house-hold works. He was also doing labour work. P.W. 2 Devi Prasad has stated that the deceased was doing mason work with him and he was paying Rs. 150/ - per day to him. In his cross examination this witness has stated that he had not brought attendance register and payment register with him. P.W. 3 Shiv Raj Singh Negi has also stated that the deceased was doing work of mason and earning Rs. 150/ - per day. Thus there is no definite evidence regarding the income of the deceased. However, the deceased was a young man of 24 years of age and he could have certainly earned a sum of Rs. 100/ - per day even by doing labour work. Thus the claims Tribunal was justified by holding his monthly income at Rs. 3,000/ -. 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 at Rs. 36,000/ - per annum on the basis of the notional income requires no interference.

12. At the time of accident the age of the deceased was 24 years. He was unmarried, as such multiplier has to be selected on the basis of the age of claimants i.e. parents of the deceased i.e. mother, who is a non-earning member in the family and also having two daughters.

13. The Apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , has held that, where the claimants are parents of the deceased, the multiplier should not be more than ten.

14. We deem in necessary to reproduce paragraph 12 of the Apex Court judgment in that case:

12. Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs. 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation.

15. In the present case the mother of the deceased is 55 years of age. He has also left behind two unmarried sisters in the family. There is no evidence that the mother and sisters of the deceased are employed or earning anything. Thus in

the present case multiplier of 11 selected by the Claims Tribunal appears to be just and proper. By multiplying annual dependency of Rs. 24,000/ - by 11, the compensation works out to Rs. 2,64,000/ -. The Claims Tribunal also awarded Rs. 2,000/- for funeral expenses. We enhance the amount of funeral expenses to the extent of Rs. 5,000/-. We also award a sum of Rs. 5,000/- for the loss of estate of the deceased and thus the total compensation of Rs. 2,64,000 + 5000 + 5000 = Rs. 2,74,000/ - is awarded to the claimants.

16. The above compensation has been worked out keeping in view the observations made by the Apex Court in the case Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, . In paragraph 10 it has been observed as under:

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. The Tribunal has awarded interest at low rate of 5% per annum. We enhanced the rate of interest from 5% per annum to 7% per annum. We, with a view to avoid any delay in the computation of the amount of enhanced interest by the Claims Tribunal, deem it proper to quantify the amount of enhanced interest payable to the claimants. We, therefore, quantify the amount of enhanced interest at Rs. 6,000/-.

18. The Respondent No. 1 has already paid Rs. 2,66,000/ - towards the amount of compensation and Rs. 17,162/ - as interest. Thus now the Respondent No. 1 has to pay a sum of Rs. 8,000/ - as the enhanced amount of compensation along with Rs. 6,000/ - as enhanced interest.

19. The appeal is allowed. The compensation of Rs. 2,66,000/ - awarded by the Claims Tribunal is enhanced to Rs. 2,74,000/ -. The Appellants are also entitled to get Rs. 6,000/ - towards enhanced interest. The Respondent No. 1. National Insurance Company is directed to pay the entire amount due within two months.

20. The amount deposited in this Court be remitted to the Claims Tribunal concerned forthwith.

21. There will be no order as to costs.