

(2008) 12 UK CK 0021

In the Uttarakhand High Court

Case No : Appeal From Order No. 152 of 2007

Smt. Vimala Devi and Others

APPELLANT

Vs

The New India Assurance Company Ltd. and Others

RESPONDENT

Date of Decision : 31-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) 12 UK CK 0021

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Pankaj Purohit, for the Appellant; Farida Siddiqui holding brief of T.A. Khan, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, 1988, has been preferred by the claimants against the judgment and award dated 25.1.2007 passed by Motor Accident Claims Tribunal/District Judge, Chamoli, in M.A.C.T. Case No. 30/2006, Smt. Vimala Devi and Ors. v. The New India Assurance Company Ltd. and Ors.

2. The claimants-Smt. Vimala Devi and others filed a claim petition u/s 166 of Motor Vehicles Act for grant of compensation alleging therein that on 13.2.2006 deceased-Vijay Lal was going from Karnaprayag to Tharali in Bus No. U.P.07C-3469. When the said bus reached two kilometers ahead from Nalgaon towards Narayanbagad, RS. Karnaprayag, it met with an accident on account of rash and negligent driving of its driver (opposite party No. 3), as a result of which deceased died at the spot itself. The deceased was 44 years of age and was posted as clerk in P.W.D. Department, Tharali and was getting Rs. 8,724/- per month as salary, at the time of accident. Therefore, the claimants claimed a desired amount of compensation against opposite parties.

3. Opposite party No. 1 insurance company contested the claim petition by filing its written statement. It has denied all the contents of claim petition for want of knowledge and pleaded that at the time of accident, registration certificate,

insurance policy, driving licence and permit etc. relating to vehicle involved in the accident, were not valid, therefore, claim petition of the claimants does not deserve to be admitted.

4. Opposite parties No. 2 and 3 i.e. owner and driver of offending vehicle in question filed their joint written statement. They have admitted the factum of accident on the date, place and time as stated by the claimants. They have stated that opposite party No. 2 is the owner of vehicle No. U.P.07C-3469 and at the time of accident opposite party No. 3-Dalip Singh was driving this vehicle. Opposite party No. 3 was holding valid driving licence and the said vehicle was insured with opposite party No. 1 -insurance company. It has also been stated that at the time of accident all the papers of vehicle No. U.P.07C-3469, were valid. This accident had taken place on account of falling of tree over the vehicle in question; therefore, claim petition of the claimants is liable to be dismissed.

5. The learned Tribunal on the basis of pleadings adduced by the parties framed necessary issues.

6. The learned Tribunal after having considered the entire evidence available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 4,65,500/- along with interest of 5% per annum from the date of filing the petition till the date of actual payment, vide judgment and award dated 25.1.2007.

7. Feeling aggrieved by the aforesaid impugned judgment and award, the Appellants-claimants have preferred the present appeal before this Court for enhancement of amount of compensation.

8. Heard Mr. Pankaj Purohit, learned Counsel for Appellants-claimants, Mrs. Farida Siddiqui, Advocate holding brief of Mr. T.A. Khan, learned Counsel for Respondent No. 1. The New India Assurance Company Ltd. and perused the record.

9. Learned Counsel for Appellants-claimants has confined his argument to this aspect that amount of compensation awarded by learned Tribunal is meager and it is liable to be enhanced by this Court.

10. As far as factum of accident is concerned, the Tribunal has discussed this point while deciding issue No. 1. The learned Tribunal after having considered all the evidence recorded a finding that at the time of accident offending vehicle in question was being driven by its driver rashly and negligently. The Tribunal thereafter came to the conclusion that claimants have been successful in establishing that on 13.2.2006 deceased-Vijay Lal was going from Karnaprayag to Tharali in offending Bus No. U.P.07C-3469 and when the said bus reached two kilometers ahead from Nalgaon towards Narayanbagad, RS. Karnaprayag, it met with an accident on account of rash and negligent driving of its driver, as a result of which deceased died at the spot itself. I do not find any illegality in the said finding recorded by the Tribunal and it deserves to be confirmed.

11. The Tribunal further held that on the date of accident vehicle in question was being plied with all valid papers relating to it and driver of vehicle in question was holding valid and effective driving licence, therefore, vehicle in question was being plied in accordance with conditions of insurance policy. I do not find any illegality in the finding recorded by the Tribunal in this regard and it also deserves to be confirmed.

12. As far as amount of compensation to be awarded in favour of claimants, is concerned, the Tribunal has discussed this point while deciding issue No. 3. The record reveals that age of deceased at the time of accident was 44 years. The deceased was working as clerk in PWD Department and was getting Rs. 8724/- per month as salary. The salary certificate has been filed by the claimants before the court below as paper No. 6C, which indicates that deceased had been getting basic salary as Rs. 4600/-, dearness pay as Rs. 2300/- and dearness allowance as Rs. 1449/-. The approach adopted by the Tribunal in coming to the conclusion that after total deduction of deceased from the salary amounting to Rs. 3030/- per month, the net salary received by the deceased as Rs. 5694/- appears to be wrong and impracticable. It is settled law that while calculating the amount of compensation, basic salary, dearness pay and dearness allowance shall be taken into account and in the instant case the deceased was getting basic salary, dearness pay and dearness allowance to the tune of Rs. 8349/-. Therefore, to my mind, the amount of Rs. 8349/- (rounded Rs. 8350/-) should have been assessed by the Tribunal for calculating the amount of compensation. Out of the aforesaid amount, in case, if one-third is deducted as personal expenses of the deceased, then the financial dependency of claimants comes to Rs. 5560/- (rounded Rs. 5570/-). The Tribunal has thus wrongly concluded the finding while assessing the dependency of claimants at Rs. 3800/- per month.

13. On the basis of aforesaid calculation, I come to the conclusion that annual financial dependency of claimants comes to Rs. 5570 ? 12 = Rs. 66,840/-.

14. The age of deceased at the time of accident was 44 years. I am of the view that keeping in view the age of deceased the Tribunal has adopted the correct multiplier of "10". I agree with the Tribunal on this aspect. Therefore, after adopting the multiplier of "10" the amount of compensation to be paid to the claimants, comes to Rs. 6,68,400/-. The amount awarded by the Tribunal under other different heads shall remain intact. The interest awarded by the Tribunal on the awarded amount of compensation shall also remain intact.

15. On the basis of above, the total amount of compensation to be awarded in favour of claimants is Rs. 6,68,400 + Rs. 2000 + Rs. 2500 + Rs. 5000 = Rs. 6,77,900/-, along with interest as indicated in the impugned judgment and award.

16. For the reasons stated above, I am of the view that appeal is liable to be partly allowed.

17. Accordingly, appeal is partly allowed. The impugned judgment and award is

modified to the extent that amount of compensation to be awarded in favour of claimants, would be Rs. 6,77,900/- (Rupees Six Lacs Seventy Seven Thousand Nine Hundred) (instead of Rs. 4,65,500/- as has been, awarded by the Tribunal), along with interest as indicated in the impugned judgment and award.