

(2008) 07 UK CK 0013
In the Uttarakhand High Court

State of Uttaranchal and Another

APPELLANT

Vs

Smt. Jainmati Jain and Smt. Maya Devi

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Citation : (2008) 07 UK CK 0013

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—Both these appeals arise out of same accident and common question is involved for consideration, hence, they are being decided by this common judgment.

2. A.O. No. 313 of 2005 has been preferred against the judgment and award dated 11.12.2003, passed by Motor Accident Claims Tribunal/III F.T.C. U.S. Nagar in MACP No. 238 of 1999. This petition has been filed for compensation in lieu of death of Balkishan. The Tribunal awarded a sum of Rs. 3,47,000/. as compensation against the defendants along with interest @ 8% per annum from 4.11.99 to the actual date of payment. Half of the amount of compensation was payable by the owner of the offending vehicle and the remaining half by the State. The Insurance Company was absolved from its liability.

3. The A.O. No. 260 of 2006 has been preferred against the judgment and dated 11.12.2003, passed by Motor Accident Claims Tribunal/III F.T.C. U.S. Nagar in MACP No. 240 of 1999. This petition has been filed for compensation in lieu of death of Satish Kumar Jain. The Tribunal awarded a sum of Rs. 8,78,000/. as compensation against the defendants along with interest @ 8% per annum from 4.11.99 to the actual date of payment. Half of the amount of compensation was payable by the owner of the offending vehicle and the remaining half by the State. The Insurance Company was absolved from its liability.

4. The brief facts of the case, giving rise to these appears are that, on

15.8.1999, the deceased Balkishan and Satish Kumar Jain were travelling in Motorcycle bearing registration No. U.P. 04.B/1599, which was being driven by deceased Balkishan and Satish Kumar Jain was a pillion rider. When they reached near Shankar Farm on Kichha.Sitarganj Motor Road, at about 10 A.M. suddenly jeep bearing registration No. T.R..439 came from the front side followed by bus No. U.G.P. 4304. The bus driver tried to overtake the said jeep. The jeep was also at high speed and due to rash and negligence of both these vehicles they collided with each other, the jeep fell in a field but the bus dashed the motorcycle front side after losing control over the bus. Both the motorcyclists sustained grievous injuries and died instantaneously at the spot. Therefore claim petitions have been filed for the compensation. 3

5. According to the claimants deceased Balkishan was 48 years of age and he used to do the profession of a contractor. His annual income was about Rs. 1,50,000/. and he used to pay income tax also. With regard to deceased Satish Kumar Jain, it was alleged that he was 35 years of age and he was sub.contractor working under contractor Suresh Chandra Jain who used to give him a monthly salary of Rs. 3,000/.. Both the deceased have left behind them, their widows and children.

6. Opposite Party No. 1 Iqrar Ali is the owner of Bus No. U.G.P. 4304. He contested the petitions by filing written statement and alleged that the accident did not take place by his vehicle. The driver of Government Jeep No. TR.439 was driving the jeep in a high speed due to which the accident took place. He also alleged that his Bus was having valid insurance, fitness and the driver was possessing valid driving license, therefore, liability cannot be fastened upon him. He also alleged that the petitions are bad for non.joinder of owner, and insurer of the motorcycle involved in the accident as party to the case.

7. Opposite Party Nos. 2 and 3 also contested the claims and alleged the accident has occurred due to own fault of motorcyclists and the bus No. U.G.P. 4304 who dashed the motorcycle. They denied their negligence. The petitions were also bad for non.joinder of owner and insurer of the offending motorcycle and bus driver as party to the case.

8. Opposite Party No. 4, owner of motorcycle involved in the accident also filed his written statement and alleged that the motorcyclist had no fault. The motorcycle was insured with Oriental Insurance 4 Company and the compensation if any shall be payable by the insurer.

9. The Opposite Party Oriental Insurance Company also contested the petitions by filing its written statement and alleged that there was no any fault of the motorcyclist but the accident has occurred due to rash and negligence of bus driver and the jeep driver. It also alleged that the motorcycle was not insured for third party risk.

10. The learned Tribunal on the pleadings of parties framed relevant issues in the claim petitions. Thereafter parties adduced evidence in support of their cases.

The Tribunal after hearing learned Counsel for the parties and considering the evidence on record awarded compensation to the claimants.

11. Feeling aggrieved the State and District Programme Officer, Nainital have preferred the appeals before this Court.

12. In A.O. No. 313 of 2005 Cross Objection was also filed by the claimants for enhancement of compensation.

13. Heard learned Counsel for the parties and perused the material on record.

14. The sole contention of appellant/State is that the State could not have been fastened with the liability to pay any compensation because the accident took place due to sale rash and negligence driving of the Bus who rashly tried to overtake the jeep and dashed the jeep from right side, as a result of which the jeep fell in a Khud and 5 the jeep did not collide with the motorcycle, and the Bus alone collided with the motorcycle. He, therefore, urged that the State be exonerate from the liability of compensation.

15. Perusal of the record reveals that the learned Tribunal framed issue Nos. 1 and 3 pertaining the rashness of the vehicles involved in the accident. In both the claim petitions to prove the accident P.W.2 Prem Chandra Jain and P.W.3, Bheem Sain have been produced. Both these witnesses are eyewitnesses of the accident. Both these witnesses have deposed that on 15.8.1999 they were going to Sitarganj from Kichha riding in a motorcycle for some personal work. Satish Kumar Jain and Balkishan were also going Sitarganj in a motorcycle U.P. 04.B/1599 in front of them. The motorcycle was being driven by Balkishan in a cautious manner. When the motorcycle of Balkishan reached in front of Shankar Far, from front side Jeep T.R. 439 was coming at a fast speed, followed by Bus UGP 4304 which was also coming in a rash and negligent manner and the Bus was trying to overtake the jeep and due to their rash and negligence both jeep and the Bus collided with each other. The jeep went down in the field and the Bus dashed the motorcycle due to which Satish Kumar Jain and Balkishan sustained grievous injuries and both of them died at the spot. The present of these witnesses P.W.2 and P.W.3 at the spot has not been disputed from the side of the opposite parties. Nothing has been brought out from their cross.examination which may make their testimony doubtful.

16. The F.I.R. of the accident was promptly lodged by Prem Chandra Jain, P.W.2, and he had mentioned all these facts of the accident. Therefore, occasion of 6 fabricating false story was not there. Although report was also lodged by Smt. Bharati D.W.6, but in this report nothing has been mentioned as to by which negligence the accident had occurred. There is simply mention that accident has occurred by city bus. The learned Tribunal also took note of the fact that D.W.7, Govind Ram driver of Government Jeep met with accident did not lodge report about the accident. D.W.3, Arif Khan, cleaner of the offending bus has deposed that the Jeep TR 439 was moving very fastly and in order to overtake the bus dashed with the bus and fell into Khud. According to this witness the jeep also

dashed with the motorcycle. D.W.4, Amrish Nath Tewari is also an eyewitness of the accident and he also alleged about the negligence of Jeep. The other witness D.W.6, Bharti Tewari has stated different story. According to her the Bus came there at high speed and dashed with the jeep. All these witnesses did not tell the rash and negligence on the part of motorcyclist. Therefore, in view of the rival contentions of the parties and evidence on record, the learned Tribunal was justified in holding the contributory negligence of both the vehicles in a ratio of half and half. I do not find any infirmity in the finding arrived at by the learned Tribunal.

17. So far as quantum of compensation awarded by the Tribunal in both the claim petition, the same has been properly assessed by the Tribunal and the finding on this score also does not require any interference.

18. However, the interest awarded by the Tribunal is on higher side and in my opinion it should be @ 7.5% per annum instead of 8% as has been awarded by the learned Tribunal. 7

19. Accordingly both the appeals are dismissed with slight modification in the interest part awarded by the learned Tribunal. The impugned judgment and awards are maintained. However, the interest shall be payable @ 7.5% per annum instead of 8% per annum as has been awarded by the Tribunal in both the claim petitions.

20. The cross objection filed by claimants in A.O. No. 313/2005 is also dismissed.

21. The statutory amount of compensation deposited with this Court in both the appeals, be remitted to the Tribunal concerned.

22. Let a copy of this judgment be placed in the file of A.O. No. 620/2006.