

(2007) 09 UK CK 0028
In the Uttarakhand High Court

Sunita Devi and Others

APPELLANT

Vs

United India Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2008) ACJ 2516 : (2008) 8 UC 812 : (2007) 2 UD 548

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Judgement

Rajeev Gupta, C.J. and J.C.S. Rawat, J.—This is a claimants' appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Pauri Garhwal vide award dated 2.6.2005 passed in Motor Accidents Claim Petition No. 12 of 2004.

2. By filing a claim application u/s 163-A of the Motor Vehicles Act, 1988, the claimants, who are unfortunate widow and minor children of the deceased Kheemanand, claimed compensation of Rs. 7,35,000 for his death in motor accident on 28.1.2004 when Maruti van bearing registration No. UA 12-0019, which was being driven by the deceased himself, met with an accident resulting in his death on the spot itself. The claimants pleaded that deceased Kheemanand used to earn Rs. 5,000 per month as driver.

3. The owner and insurer of Maruti van contested the claim and denied their liability to pay compensation to the claimants. The insurer took the plea that Maruti van was being plied in breach of the policy conditions; the driver of Maruti van was not holding a valid and effective driving licence; and the accident occurred due to negligence of the driver himself.

4. Claimants examined PW 1, Sunita Devi in support of their claim, whereas the owner and insurer of Maruti van did not examine any witness in rebuttal.

5. The Tribunal, on the evidence led by the parties, held that Kheemanand died on account of the injuries sustained by him in the motor accident on 28.1.2004

and the insurer of Maruti van was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, Claims Tribunal assessed his income at Rs. 2,100 per month and Rs. 25,200 per annum. After deducting 1/3rd of the said amount as the personal expenses of the deceased and by using the multiplier of 17, the compensation was worked out to Rs. 2,85,600. As the amount was being paid in lump sum to the claimants, the Tribunal further deducted 1/3rd of Rs. 2,85,600 and the compensation payable to the claimants was worked out to Rs. 1,90,400. By awarding Rs. 5,000 for loss of consortium to the widow, a total compensation of Rs. 1,95,400 was awarded to the claimants for the death of Kheemanand in the motor accident. The Tribunal further directed the insurer of Maruti van to pay interest at the rate of 9 per cent per annum in the event of its failure to pay the amount of compensation within a period of two months from the date of the award.

7. Mr. Pramod Bailwal, the learned Counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 2,100 per month and Rs. 25,200 per annum; in further reducing the amount of compensation by 1/3rd on account of lump sum payment and in not awarding interest on the amount of compensation and directing only a conditional payment of interest in the event of the failure of the insurer to pay the compensation within a period of two months from the date of the award.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned Counsel for the insurance company of Maruti van, on the other hand, supported the award and submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 1,95,400 to the claimants.

9. The findings recorded by the Tribunal that deceased Kheemanand died on account of the injuries sustained by him in the motor accident and that the insurer of Maruti van was liable to pay compensation to the claimant have, now, attained finality, as the respondents have not filed any appeal against the award.

10. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal/court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , observed in paras 8 to 10:

(8) But 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 deceased might have got better employment or income or might have lost his employment or income altogether.

(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.

11. It is not in dispute that deceased Kheemanand was working as a driver on Maruti van bearing registration No. UA 12-0019. True, the claimants pleaded that the deceased Kheemanand was earning Rs. 5,000 per month, but no clinching evidence was led before the Tribunal to establish the said income of the deceased. It is true that the owner of Maruti van, in her written statement, has stated that a sum of Rs. 2,100 per month was being paid as salary to deceased Kheemanand. As it was not possible to reconcile the evidence of the claimants and that of the owner of Maruti van on the question of income of the deceased, the Tribunal ought to have assessed the income of the deceased on the basis of the notional income. The notional income of Rs. 15,000 per annum was prescribed in the Second Schedule u/s 163-A of the Motor Vehicles Act in the year 1994. If the increase in the cost of living between 1994 and 2004, the year of the accident, is taken into account, the notional income of Rs. 15,000 per annum, prescribed in the year 1994, would come to Rs. 30,000 per annum in the year 2004. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 30,000 per annum.

12. By deducting 1/3rd of Rs. 30,000 as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 20,000 per annum.

13. Considering that deceased Kheemanand was 33 years of age on the date of the accident and his widow claimant No. 1, Sunita Devi is shown to be 30 years of age in the claim petition and that the deceased left four minor children to be maintained and brought up by his widow, multiplier of 15 would be appropriate in the present case.

14. By multiplying the annual dependency of Rs. 20,000 with the multiplier of 15, compensation works out to Rs. 3,00,000. The claimants are further entitled to a sum of Rs. 5,000 towards funeral expenses; Rs. 5,000 for loss to estate; and Rs. 5,000 for loss of consortium to the widow. Thus, the claimants become entitled to receive compensation of Rs. 3,15,000 for the death of Kheemanand in the motor accident on 28.1.2004.

15. The Claims Tribunal has erred in not awarding any interest on the amount of compensation and only directing conditional payment of interest in the event of the insurer's failure to pay the amount of compensation within a period of 2 months from the date of the award. Considering the prevalent rate of interest on fixed deposits in the nationalised bank, award of interest at the rate of 7 per cent per annum would be appropriate in the case.

16. For the foregoing reasons, appeal filed by the claimants u/s 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part.

17. The compensation of Rs. 1,95,400 awarded by the Tribunal is enhanced to Rs. 3,15,000.

18. Interest at the rate of 7 per cent per annum is awarded on the amount of compensation of Rs. 3,15,000 payable from the date of the application till the date of payment. On the amount of Rs. 1,95,400 awarded by the Tribunal, interest shall be payable from the date of the claim petition, i.e., 21.2.2004 till the date of deposit of the said amount by the insurance company before the Tribunal. On the enhanced amount of compensation of Rs. 1,19,600, interest shall be payable from the date of the claim petition, i.e., 21.2.2004 till the date of deposit of the enhanced amount to be now deposited by the insurance company before the Tribunal.

19. Out of the enhanced amount of compensation of Rs. 1,19,600, Rs. 25,000 each shall be deposited in the name of the appellants-claimants Rashmi, Sanjay, Kaamni and Akash in fixed deposit with a nationalised bank which shall be payable to them on their becoming major. The balance amount of Rs. 19,600 and entire amount of interest shall be paid to the appellant-claimant Sunita Devi.

20. No order as to costs.