

(2008) 01 UK CK 0018
In the Uttarakhand High Court
Case No : A.O. No. 411 of 2006

The New India Assurance Company Limited	APPELLANT
Vs	
Smt. Parvati Devi and Others	RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2008) 3 UC 1674

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : T.A. Khan, for the Appellant; Pooran Singh Rawat, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Shri T.A. Khan, counsel for the Appellant and Shri Pooran Singh Rawat, counsel for the Respondent No. 1.

2. This is insurer's appeal.

3. By the present appeal, filed u/s 173 of Motor Vehicles Act, 1988, the Appellant has prayed for setting aside the judgment and award dated 10-4-2006 passed by the Motor Accident Claims Tribunal, Nainital in M.A.C.P. No. 60 of 2005.

4. Briefly stated, a motor accident claim petition No. 60 of 2005 was filed u/s 140 and 166 of Motor Vehicles Act for compensation of Rs. 10,00,000/- on account of death of Navin Chandra Kergati (hereinafter referred to as "the deceased"). According to the claimant, on 22-3-2004 when the deceased was traveling by Truck No. UA-04A-7437 alongwith goods, at about 8 p.m. the said truck fell down in the ditch due to rash and negligent driving of the Truck by its driver. The deceased sustained injuries and succumbed to injuries. The deceased was posted as constable in the Uttaranchal Police Department and was getting salary of Rs. 5673/- per month. The deceased was having sound health. The claimant was dependent on the deceased. The claimant has suffered mental

agony on account of the death of the deceased. The claimant has claimed a sum of Rs. 10,00,000/-towards compensation.

5. A written statement has been filed on behalf of the owner of the Truck in question wherein the accident in question has been admitted. It has been admitted that the deceased died in the accident in question. It has been denied that the vehicle in question was being driven rashly and negligently. It has also been submitted that in the said accident, four men have died including driver and cleaner of the truck in question and the report of the said accident was lodged in PS. Bhatronjkhana. It has been submitted that the truck was also damaged in the said accident and the owner has got the compensation on account of own damages from the New India Assurance Company Ltd. The Truck in question was insured with the New India Assurance Company Ltd. and the driver was having a valid driving license. The insurance company is liable to indemnify the claim.

6. The New India Assurance Company Ltd. has filed a written statement denying the averments contained in the claim petition. It has been submitted that the Truck in question was not being driven in accordance with the insurance policy. The claim petition is liable to be dismissed.

7. On the pleadings of the parties, the claims tribunal has framed the following issues:

1. As to whether on 22-3-2004 the Truck No U.A. 04-7437 was not being driven in accordance with the insurance policy ? If yes, its effect ?

2. To what relief the claimants are entitled to.

8. The claimant has examined Parvati Devi as P.W.1 and Bhunwan Chandra Joshi as P.W.2.

9. Towards the documentary evidence, the claimant has produced 5 documents as per list 5 ga and the salary certificate of the deceased as per list 19 ga. The Defendant No. 1 has produced three documents as per list 14 ga and the copy of judgment passed in M.A.C. 88 of 2004 as per list 15 ga.

10. While deciding as to whether on 22-3-2004 the Truck No. U.A. 04-7437 was not being driven in accordance with the insurance policy, the claims tribunal has taken into consideration the fact that the insurance company has given the own damages claim to the Truck owner which proves that the insurance company has admitted that the truck was being driven in accordance with the insurance policy. The claims tribunal, therefore, has recorded the finding that the truck in question was being driven in accordance with the insurance policy.

11. While deciding with regard to quantum of compensation, the claims tribunal has taken into consideration the net income of the deceased to the extent of Rs. 4025/- per month which was worked out to the extent of Rs. 48,000/- per annum after rounding off. After deducting 1/3rd of the same, the annual dependency was worked out to the extent of Rs. 32,000/-. Further, the claims

tribunal has taken into consideration the age of the mother of the deceased about 45 years and selected the multiplier of 13. By multiplying the annual dependency of Rs. 32000/- with the multiplier of 13, the claims tribunal has worked out the amount of compensation to the extent of Rs. 4,16,000/-. The claims tribunal has also awarded a sum of Rs. 5,000/- towards loss of consortium and Rs. 5,000/- towards the funeral expenses. Thus, a sum of Rs. 4,26,000/- has been awarded towards compensation.

12. Counsel for the Appellant has submitted that the multiplier has been selected on the higher side.

13. Counsel for the Appellant has submitted that the amount is exaggerated. I find that since the age of the deceased was 20 years and in the judgment of *The Municipal Corporation of Greater Bombay v. Shri Laxman Iyer and Anr.* 2003 (7) SC 492, finding has been recorded by the Apex Court to the following effect "11. This Court in *M.S. Grewal's* case (supra) has clearly observed that the decision in *Lata Wadhwa's* case (supra) is definitely a guiding factor in the matter of award of compensation wherein children died under an unfortunate accident. The said observation was made after taking into consideration the conclusions arrived in *Lata Wadhwa's* (supra) regarding the compensation which was to be applied in relation to the death of a child. This Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, held that the proper method of compensation is the multiplier method, and the same view was re-iterated in *M.S. Grewal's* case (supra) observing that "needless to say that the multiplier method stands accepted by this Court in the said decision."

14. 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 have 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 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 3 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 the date of application for compensation."

15. In view of the judgment *Shri Laxman Iyer* (supra), taking into consideration the age of the mother of the deceased about 45 years, the multiplier is reduced to the extent of 11. So far as the finding with regard to income of the deceased is concerned, the same is affirmed. By multiplying the annual dependency of Rs.

32,000/- with the multiplier of 11, the amount of compensation is worked out to the extent of Rs. 3,52,000/-. The compensation awarded by the claims tribunal to the extent of Rs. 5,000/- towards consortium and Rs. 5,000/- towards funeral expenses is also confirmed. Thus, the claimant will be entitled for a sum of Rs. 3,62,000/- towards compensation.

16. Subject to the aforesaid modification in the quantum of compensation, the appeal partly succeeds and is allowed. No order as to costs.