

(2008) 05 UK CK 0006
In the Uttarakhand High Court

The New India Assurance Company Ltd.	APPELLANT
Vs	
Satya Prakash Tyagi and Another Vs New India Assurance Company Limited and Another	RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 05 UK CK 0006

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—Since these appeals arise out of same judgment and award and similar controversy is involved, therefore, they are being decided by this common judgment and order.

2. These appeals, u/s 173 of Motor Vehicles Act, 1988, have been preferred against the judgment and order dated 17.4.2006 passed by Additional Sessions Judge/First Fast Track Court, Roorkee, District Haridwar, in MAC Petition No. 75 of 2003, Satya Prakash Tyagi v. Parvinder Kumar and Anr.

3. Brief facts of the case as narrated in the claim petition are that on 12.11.2002 at about 11.00 a.m. claimant-Satya Prakash Tyagi by his scooter No. UGX-4439 was going to Civil Court for doing pairavi in the cases. During the way near Gas Plant, in front of B.H.E.L. Police Chowki, a Tata Indica Car No. UA-08-6062 dashed claimant-injured as a result of which he sustained injuries. The claimant injured was rushed to B.H.E.L. Ranipur Hospital but doctors refused to treat the claimant. Thereafter, claimant-injured was taken in Kasturi Nursing Home, Roorkee, where after primary aid he was referred to Muzaffarnagar. Due to said accident claimant-injured received a fracture in his left leg, finger of left hand and injury in ribs. He remained hospitalized for a period of 5 days. The claimant has pleaded that about Rs. One Lac was expended on his medical treatment, which is still going on. The car was being driven by Parvinder Kumar, who himself

was the owner of vehicle. The claimant claimed a sum of Rs. 14,81,487/- as compensation against opposite parties.

4. The opposite party No. 1-Parvinder Kumar, owner of Tata Indica did not file written statement before the Tribunal, hence, order was passed to proceed ex parte against him.

5. The opposite party No. 2-insurance company filed its written statement admitting the fact that Car No. U.A.08-6062 was insured with it from 20.7.2002 to 19.7.2003. It has denied the profession and salary of claimant-injured. It has further pleaded that no details of injuries and expenses incurred in medical treatment have been mentioned by the claimant-injured. It has also pleaded that scooter UGX-4439 itself was being plied rashly and negligently due to which alleged accident took place and so called accident did not take place with the alleged Indica Car and perhaps it had taken place with any unknown vehicle which could not be identified. It has further pleaded that driver of Vehicle No. U.A.08-6062 was not at fault. Claimant-injured was not having any R.C., Fitness etc. and the vehicle from which the said vehicle collided with, was also not having any R.C. Fitness, Licence etc. Therefore, the claim petition is liable to be dismissed.

6. The learned Tribunal on the basis of pleadings of parties framed relevant issues in the claim petition. Parties led evidence in support of their cases. The learned Tribunal after having considered the material available before it and hearing learned Counsel for the parties decreed the claim petition in favour of claimant for a sum of Rs. 2,82,000/-, payable by opposite party No. 2-New India Assurance Co. Ltd., along with an interest @ 6% per annum from the date of filing the petition till the date of actual payment.

7. Feeling aggrieved by the aforesaid judgment and award, the appellant-insurance company has preferred A.O. No. 338 of 2006 before this Court.

8. The claimant has also preferred A.O. 425 of 2006 for enhancement of compensation.

9. Heard Sri T.A. Khan, learned Counsel for appellant-insurance company, Sri Sanjeev Singh, learned Counsel for claimant-respondent No. 1 and perused the record.

10. Learned Counsel for the appellant has submitted that on the one hand claimant-respondent No. 1 was alleging himself to be an Advocate, and on the other hand he was alleging himself to be an Agriculture labourer. The multiplier adopted by the Tribunal is on higher side.

11. On the other hand, learned Counsel for the claimant-respondent No. 1 contended that the learned Tribunal awarded meager amount of compensation and the same should be enhanced by this Court.

12. Firstly, I take A.O. No. 425 of 2006 for decision.

13. I have gone through the impugned judgment and award thoroughly. The multiplier of "11" as has been adopted by the Tribunal is on lower side in view of the pronouncement of the Hon'ble Apex Court cited in the cases of Tamil Nadu State Transport Corporation Ltd. v. S. Rajpriya and Ors. reported in 2005 (4) SC 87 and The Managing Director, TNSTC v. Sripriya and Ors. reported in 2007 (5) SCC 301. The Tribunal has wrongly assessed the age of claimant-injured at 50 years, while as per the record the age of claimant-injured was 45 years at the time of accident (as date of birth of claimant is 15.11.1956, which was proved by Driving licence and Income Tax Certificate). Therefore, keeping in view the age of claimant-injured, the multiplier in this case should be "13" instead of "11" as has been adopted by Tribunal.

14. As far as income of the claimant-injured is concerned, the Tribunal has assessed the income of claimant at Rs. 11,000/- per annum keeping in view the relevant material available on record as well as considering the fact of 45% disability of claimant-injured. The finding of the Tribunal for assessing the income of the claimant is not liable to be disturbed. After adopting the multiplier of "13" the total financial dependency of claimant comes to Rs. $11,000 \times 13 =$ Rs. 1,43,000/-. The Tribunal also awarded a sum of Rs. 1,11,156/- towards medical expenses and a sum of Rs. 50,000/- towards pain and suffering, which appears to be justified. Thus, the total amount of compensation to be awarded in favour of claimant would be Rs. 1,43,000 + Rs. 1,11,156 + Rs. 50,000 = Rs. 3,04,156/- (rounded Rs. 3,04,200/-).

15. So far as A.O. No. 338 of 2006 is concerned, this appeal has been filed by insurance company against the impugned judgment and award. In view of findings recorded by me while deciding A.O. No. 425 of 2006 arising out of same claim petition, this appeal has no force, as the impugned judgment and award has been partly modified and A.O. No. 425 of 2006 has been allowed by me. Therefore, this appeal is liable to be dismissed.

16. With the above observations, A.O. No. 425 of 2006 is partly allowed. The impugned judgment and award is modified to the extent that claimant is entitled to get compensation to the tune of Rs. 3,04,200/- (Rupees Three Lacs Four Thousand Two Hundred), instead of Rs. 2,82,000/- as has been awarded by the Tribunal. The interest as indicated in the impugned judgment and award shall remain intact.

17. A.O. No. 338 of 2006 filed by insurance company is dismissed.

18. Let a copy of this order be placed in the file of A.O. No. 425 of 2006.