(2006) 08 UK CK 0031

In the Uttarakhand High Court

Case No : Appeal From Order No. 351 of 2006

The New India Assurance Company Ltd. APPELLANT

Vs

Smt. Parwati Devi and Another RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166, 170, 173

Citation : (2007) 1 UC 145

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

Bench : Division Bench

Advocate : P.C. Maulekhi, for the Appellant; I.S. Mehra, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri P.C. Maulekhi, Advocate for the Appellant.

Sri I.S. Mehra, Advocate for Respondent No. 1.

None for Respondent No. 2.

2. This is insurer''s appeal against the Award dated 29-03-2006 passed by Motor Accident Claims Tribunal, Nainital in Motor Accident Claim Case No. 95 of 2005.

3. Claimant Smt. Parwati Devi, unfortunate widow of deceased Himmat Singh Mehta, claimed compensation of Rs. 5,00,000/- for the death of her husband in the motor accident, when on 18-01-2005, his scooter, while he was going to Haldwani Bazar from his house, was dashed by the offending vehicle- Truck bearing registration No. UP 25-5439, resulting in multiple serious injuries to claimant''s husband Himmat Singh Mehta, who succumbed to those injuries during the course of his treatment on 29-01-2005 in Safdarjang Hospital, New Delhi.

4. The claimant further pleaded that her husband Himmat Singh Mehta, who was a retired Forest Ranger was getting pension of Rs. 3165/- per month and was also earning another Rs. 6000/- per month from agriculture and dairy business.

5. The owner and insurer of the offending vehicle - Truck contested the claim. The owner of the truck denied his liability to pay compensation to the claimant on the plea that the deceased himself was responsible for the accident. The insurer of the truck, on the other hand, took the plea that the truck was being plied in breach of the policy conditions and the driver of the truck was not holding a valid driving license.

6. The Tribunal, on the evidence led by the parties, held that the claimant''s husband Himmat Singh Mehta sustained injuries in the motor accident on 18-01-2005 and succumbed to those injuries during the course of his treatment on 29-01-2005; the accident occurred due to rash and negligent driving of the driver of the offending vehicle- truck; the insurer of the truck was liable to pay compensation to the claimant.

7. On the evidence led by the claimant about the income of the deceased, the Tribunal assessed his income from pension, agriculture and dairy business at Rs. 3,800 per month and Rs. 45,600/- per annum. After deducting personal expenses of the deceased, the claimant''s dependency was assessed at Rs. 30,400/- per annum. As the deceased was about 65 years of age on the date of the accident, the Tribunal selected the multiplier of ''5''. By multiplying the annual dependency of Rs. 30,400/- with the multiplier of 5, the compensation was worked out to Rs. 1,52,000/-. The Tribunal awarded further sum of Rs. 30,000/- towards medical expenses and conveyance charges spent on taking injured Himmat Singh Mehta to the hospital at Haldwani and thereafter to Bhojipura and ultimately to All India Institute of Medical Sciences (AIIMS), New Delhi and Safdarjang Hospital, New Delhi. The Tribunal awarded further sums under permissible heads and thus total sum of Rs. 2,15,000/- (Rupees Two Lakhs and Fifteen Thousand only) was awarded as compensation to the claimant for the death of her husband- Himmat Singh Mehta in the motor accident. The Tribunal further directed the insurer of the truck to pay the compensation amount to the claimant within a period of 45 days from the Award and on failure to make payment within the above stipulated period, to pay interest @ 6% per annum on the amount of compensation from the date of the claim petition.

8. Sri Maulekhi, the learned Counsel for the Appellant submitted that as the Appellant- Insurance Company was granted permission by the Tribunal u/s 170 of the Motor Vehicles Act, the Appellant Insurance Company is challenging the quantum of compensation in this appeal. The learned Counsel challenged the Award on the grounds that the Tribunal has erred in assessing the income of the deceased on higher side; in selecting the higher multiplier of ''5'', though the deceased was 65 years of age; in awarding Rs. 30,000/- towards medical expenses though the bills submitted by the claimant before the Tribunal were to the extent of Rs. 16,000/- only; and the sums awarded by the Tribunal under other heads are excessive.

9. Sri I.S. Mehra, the learned Counsel for Respondent No. 1 (claimant), on the other hand, supported the Award and submitted that the compensation of Rs.

2,15,000/- awarded by the Tribunal cannot be termed as ''excessive'' so as to warrant interference in this appeal filed by the Insurance Company.

10. The findings recorded by the Tribunal that the claimant''s husband Himmat Singh Mehta sustained injuries in the motor accident on 18-01-2005 and succumbed to those injuries during the course of his treatment on 29-01-2005; that the accident occurred due to rash and negligent driving of the driver of the offending vehicle truck and that the insurance Company is liable to pay compensation to the claimant, are not under challenge before us in this appeal. That apart, there is overwhelming reliable evidence available on record in support of those findings. We, therefore, confirm the findings recorded by the Tribunal in that behalf.

11. The claimant, in the claim petition, pleaded that her husband Himmat Singh Mehta was getting Rs. 3165/- p.m. as pension and another Rs. 6,000/- p.m. from agriculture and dairy business. The Tribunal, on thorough scrutiny of the evidence led by the claimant about the income of the deceased, assessed his income at Rs. 3,800/- per month and Rs. 45,600/- per annum.

12. On a perusal of the evidence led by the claimant about the income of the deceased, we are satisfied that the assessment of the income of the deceased by the Tribunal does not suffer from any infirmity whatsoever. Similarly, the assessment of the claimant''s dependency at Rs. 30,400/- per annum after deducting 1/3rd of the income of the deceased as his personal expenses does not call for any interference.

13. The selection of the multiplier of ''5'' by the Tribunal too, cannot be found fault with as the age of the claimant Smt. Parwati Devi and deceased Himmat Singh Mehta on the date of the accident was 60 years and 65 years, respectively. Though the Second Schedule u/s 163-A of the Motor Vehicles Act, is not strictly applicable to the claim petition filed u/s 166 of the Motor Vehicles Act, the same can always be taken into consideration as guideline for assessing ''just and proper compensation''. We, therefore, do not find any infirmity in the selection of the multiplier of ''5'' by the Tribunal in the present case.

14. That apart, what is important in a motor accident claim is that the compensation assessed should be ''just and proper'' 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. The assessment of damages to compensate the dependents 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 the deceased might have got better employment or income or might have lost his employment or income together.

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.

15. The compensation of Rs. 2,15,000/- awarded by the Tribunal to the claimant Smt. Parwati Devi who is widow of deceased Himmat Singh Mehta, when considered in the above context cannot be termed as ''excessive'' so as to warrant interference in this appeal filed by the insurance Company. True, the amount of Rs. 15,000/- awarded by the Tribunal for the physical pain and mental shock is not awarded in a death case and the sum of Rs. 15,000/- awarded towards loss of consortium to the widow, may also appear to be on the higher side, but as the total compensation of Rs. 2,15,000/- awarded by the Tribunal, in our considered view, is ''just and proper compensation'', we decline to interfere in this appeal.

16. For the foregoing reasons, the appeal filed by the Insurance Company u/s 173 of the Motor Vehicles Act fails and is hereby dismissed.

17. The amount of Rs. 25,000/- deposited by the Appellant - Insurance Company as mandatory deposit u/s 173 of the Motor Vehicles Act while filing this appeal against the impugned award is lying with the Registry. The said amount of Rs. 25,000/- be remitted to the claims Tribunal concerned immediately.

18. No order as to costs.

