(2016) 12 UK CK 0003

In the Uttarakhand High Court

Case No : Appeal Order No. 38 of 2009

The New India Assurance Company Ltd. APPELLANT

Vs

Smt. Samula Devi RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 149(2), Section 166, Section 168, Section 173

Citation : (2017) 1 ACC 813 : (2017) 1 TAC 365

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. V.K. Kohli, Senior Advocate, assisted by Ms. Rajni Supyal, Advocate, for the Appellant; Mr. Lokendra Dobhal, Advocate, for the Respondents

Final Decision : Disposed off

Judgement

Servesh Kumar Gupta, J. - Cross Objection CLMA No. 3065/2010 by Smt. Samula Devi & Others v. The New India Assurance Company Ltd.

2. The impugned judgment order dated 20.01.2009 rendered by Tribunal is under challenge, whereby the Insurance Company was asked to satisfy the award of Rs. 2,44,000/- along with 6% per annum interest from the date of institution of the petition.

3. On the other hand, the claimants, having been dissatisfied to the quantum of the award, has come up before the Court for the enhancement of the same by way of filing this cross objections.

4. Accident occurred on 10.09.2006 at 7:00 p.m, when Mr. Kamlesh, ridden on his scooter, was dashed by the Tata Truck No. UA-07-F-7147. He was going along with his another companion Sri Prem Singh. Both suffered the injuries seriously. Out of the two, Sri Kamlesh succumbed to such injuries during the course of his treatment in the Himalayan Hospital, Jolly Grant.

5. The claim petition was presented which was decreed by the Tribunal as stated

above.

6. The Insurance Company has challenged the award only on the ground of validity of the driving license of the truck. It was contended by learned Senior Counsel that driver Sri Rakesh did not have a valid driving license on the date fixed because such license was told to be issued initially from Bulandshahr, Licensing Authority, but during the course of inquiry, by its authorised investigator, such authority has issued the report in negation.

7. On the other hand, the Tribunal has relied upon the driving license submitted along with the joint written statement of the owner and driver of the offending vehicle which manifests that such driving license could be renewed multi times by the Rishikesh Competent Authority along with the due endorsement for the hills.

8. In this regard, the position has already been very clear based on the Constitution Bench judgment in the case of National Insurance Company Ltd. v. Swaran Singh and others reported in 2004 (1) U.D., 195 (S.C.) : (2004) 3 SCC 297 (para 6) and such precedent was relied by this very Court in the case of New India Insurance Company Ltd. v. Subash Chandra and others reported in 2016 (2) U.D. 442, wherein, the difference between the ''valid driving license'' and ''duly license'' was enunciated by Hon''ble Apex Court and it was held that the owner of the vehicle while providing employment to the driver is not supposed to run from one office to another in order to verify the credentials of the license, so I do not agree with the contentions of the Insurance Company.

9. As regard the enhancement of the compensation, it was argued by the learned counsel of the claimants that deceased was the youth of 30 years of age, still the multiplier of 10 has been applied by the Tribunal. Even if, the course as has been prescribed in Schedule II of the Motor Vehicle Act is followed, then the proper multiplier would have been for the denomination of 18 for evaluation of the compensation.

10. Learned Senior Counsel has resisted that the petition was filed under Section 166 and while this schedule is applicable only in the cases of Section 163 A of the Motor Vehicle Act. This Court is not inclined to accept the argument and such is rejected by this Court because in the Constitution Bench of the Apex Court, in case of Supe Dei and others v. National Insurance Company Ltd. and Another reported in (2009) 4 Supreme Court Cases 513, it has been held that the Schedule II is applicable in all the matters like Sections 163 A, 166 and 171 of the Motor Vehicle Act.

11. In that case also, the deceased was of 32 years of age while the tribunal had applied the multiplier of 15. In that case, the Hon''ble Apex Court found that the proper multiplier would have been of 17 as per the schedule so in the present controversy, I do agree with the view that the multiplier of 18 would have been the proper one for its application for evaluating the compensation.

12. This way, if we apply such multiplier in the base annual income Rs. 24,000 (left after deduction of ?), towards the personal expenses, then the compensation comes to Rs. 4,32,000. Rate of interest shall be calculated in the enhanced amount. The Court is not inclined to disturb the compensation granted in another scope.

13. In view of what has been set forth above, I dismiss this appeal No. 38/2009 and allow the Cross Objection CLMA No. 3065/2010 and award shall stand modified accordingly.

14. The right of recipients of the amount is modified to the extent that out of the award of whole compensation, Rs. 1,50,000 (75,000 each) shall be given to the father /mother of the deceased. In case, any of them has been passed away by now, then his/her share shall be given to the wife of the deceased.

15. An amount of Rs. 25,000 shall be remitted back to the Tribunal for its adjustment to the whole award.

LCR be sent back.

