

(2009) 06 UK CK 0066
In the Uttarakhand High Court

The New India Assurance Company Ltd.	APPELLANT
Vs	
Sri Yogendra Kumar Sharma and Others	RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 06 UK CK 0066

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicle Act, 1988 has been filed by the appellant against the judgment and award dated 26.04.2008 passed by Motor Accident Claim Tribunal/Additional District Judge - II, Dehradun in M.A.C.T. Case No. 44 of 2006, Sri Yogesh Kumar Sharma and Anr. v. Narendra Kumar and Ors.

2. Brief facts of the case are that on 03.02.2006 in a Tata Qualis bearing registration No. UP8C/9617, the daughter of the claimants was coming from a marriage from Bijnor to Haridwar, suddenly, when the said vehicle reached near Gaziwala, a truck bearing registration No. HR58/4458, which was being driven by its driver in a very rash and negligent manner coming from the side of Dehradun, hit the said Tata Qualis resulting the death of Kumari Arti. At the time of the accident she was 19 years of age and working as assistant with Sri Meghraj Sharma (Medicine) and was earning Rs. 3,000/- per month as salary. The claimants are the parents of the deceased, hence, they have filed a claim petition before the Tribunal for a sum of Rs. 6,20,000/- as compensation.

3. The opposite party No. 2 and 3 - driver and owner of the offending truck contested the claim petition by filing their joint written statement before the Tribunal on the ground that on the date of accident, driver of the vehicle in question was driving the truck slowly and on his side. The accident took place due to rash and negligent driving of the Tata Qualis. It has also alleged that the driver of the truck was having the valid and effective driving licence. It has also

pleaded that the vehicle in question was insured with the New India Assurance Company Ltd., therefore, the liability of compensation lies upon the insurer of the truck in question.

4. The New India Assurance Company Ltd. also contested the claim petition by filing written statement before the Tribunal on the ground that the driver of the truck was not having the valid driving licence and the truck was being plied in violation of policy. It has also pleaded that the claim petition is liable to be dismissed for non joinder of the insurer of the Tata Qualis and the accident took place in the District Haridwar, therefore, this Tribunal has no jurisdiction to adjudicate the case.

5. On the basis of the pleadings of the parties, the Tribunal has framed relevant issues in the claim petition. Thereafter, both the parties led evidence in support of their case. After hearing learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 3,16,500/- along with interest @ 6% per annum vide judgment and award dated 26.04.2008.

6. Feeling aggrieved by the aforesaid judgment and award, the appellant/insurer of truck No. HR58/4458 preferred this appeal before this Court.

7. Heard Sri V.K. Kohli, learned Senior Advocate assisted by Sri I.P. Kohili, learned Counsel for the appellant, Sri D.C.S. Rawat, learned Counsel for the respondent Nos. 1 and 2 and perused the record.

8. The Tribunal decided issue No. 1 relating to the rash and negligent driving. While deciding this issue, the Tribunal considered paper No. 29C/2, which is a site plan of the accident. From the perusal of this document it is clear that the accident took place due to rash and negligent driving of the truck in question. The Tribunal mainly relied upon this document as well as other documents and has rightly held that the accident took place due to rash and negligent driving of truck in question. I am in total agreement with the findings recorded by the Tribunal in this regard.

9. The Tribunal decided other issues relating to the monthly income of the deceased, driving licence of the driver of the truck in question as well as claim petition is bad for non joinder of the parties is concerned, the Tribunal on the basis of the evidence available on record the Tribunal came to the conclusion that the deceased was doing packing work under the employment of Meghraj Vaid and earning Rs. 3,000/- per month. As far as the driving licence of the truck driver is concerned, paper No. 19C indicates that the driver of the truck was having the valid and effective driving licence on the date of accident. So far as the question of non-joinder of the insurer of the Tata Qualis is concerned, the Tribunal already held that the accident took place due to rash and negligent driving of the driver of the truck, therefore, there is no need to implead the insurer of the Tata Qualis. The findings recorded by the Tribunal appear to be just and proper.

10. Learned Counsel for the appellant has submitted before the Court that the multiplier adopted by the Tribunal is illegal in the eye of law. He has submitted that at the time of awarding the amount of compensation, the age of the parents of the deceased was 44 and 40 years respective. Learned Counsel for the appellant has argued that keeping in view the dictum of the Hon"ble Apex Court in The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , the multiplier cannot travel more than "10".

11. Learned Counsel for the respondents/claimants has submitted that the Tribunal has rightly calculated the amount of compensation and awarded in favour of the claimants. At this stage, the impugned judgment and award needs no interference.

12. As far as the amount to be awarded in favour of the claimants is concerned, the approach adopted by the Tribunal in adopting the multiplier is erroneous. In this case, the deceased was an unmarried girl of 19 years of age and the age of the parents was 44 and 40 years respectively. Therefore, under these circumstances, the multiplier adopted by the Tribunal"15" is admittedly on the higher side. The Hon"ble Apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , has held as under:

9. So far as the quantum of compensation is concerned we find that at the time of accident, as revealed from the claim petition, the claimants were 47 years and 43 years respectively. It is not the age of the deceased alone but the age of the claimants as well which are to be the relevant factors, in case parents or other dependants are claimants.

10. In Lata Wadhwa and Others Vs. State of Bihar and Others, and M.S. Grewal and Another Vs. Deep Chand Sood and Others, law on the principles of assessment of compensation was elaborated. In Lata Wadhwa's case (supra) this Court while dealing with the issue in relation to the compensation to be paid in relation to the death of children, placing reliance upon the decision of Lord Atkinson in Taff Vale Railway Company v. Jenkins (1913 AC 1) has ruled that "In cases of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuciary benefit if the child had lived.

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 die 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 paid and the multiplier 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".

12. 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 from the date of application for compensation.

13. In view of the above observations made by the Hon'ble Apex Court, the picture is clear that the multiplier adopted by the Tribunal in the instant case is certainly on the higher side and considering the age of the claimants/parents it can never exceed "10" by the most liberal standard.

14. As I have already discussed in the body of the judgment that the monthly income of the deceased is Rs. 3,000/-, then the annual income of deceased comes to Rs. 306,000/- and after deducting 1/3rd as personal expenses of the deceased, the financial dependency of the claimants should be assessed as Rs. 24,000/- per annum. After adopting the multiplier of "10", the amount of compensation comes to Rs. 2,40,000/- (24000 x 10). As far as the amount awarded by the Tribunal under different heads, the same does not require any interference. On the basis of the aforesaid calculation, the total amount of compensation comes to Rs. 2,44,500/- (240000 + 2000 + 2500).

15. For the reasons recorded above, the appeal is partly allowed. The impugned judgment and award is modified upto the extent that the claimants are entitled to get Rs. 2,44,500/- instead of Rs. 3,16,500/- along with interest as indicated in the impugned judgment and award.

16. The statutory amount deposited by the appellant before this Court be remitted to the Tribunal concerned.