
(2007) 02 UK CK 0004

In the Uttarakhand High Court

Case No : Appeal From Order No. 859 of 2006

The New India Assurance Company Ltd.

APPELLANT

Vs

Surendra Singh and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 2 UC 1078

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

Bench : Division Bench

Advocate : M.K. Goyal, for the Appellant; B.S. Parihar, for Respondent Nos. 1 to 7 and Bharat Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, has been directed against the award dated 26-09-2006 passed by the Motor Accident Claims Tribunal/District Judge, Udham Singh Nagar (hereinafter referred as Tribunal") in M.A.C.R No. 13/2004, Sri Surendra Singh and Ors. v. Anil Kumar Sharma and Ors. whereby the learned Tribunal had awarded a sum of Rs. 5,78,000/- as compensation against the Appellant-the New India Assurance Company Ltd. The Appellant was further directed to deposit the amount of compensation within a period of thirty days from the date of award alongwith interest at the rate of 5% per annum from the date of filing of the claim petition upto the payment.

2. Brief facts of the case are that the claimants had filed a claim petition before the learned Tribunal for compensation of Rs. 10,00,000/- alleging therein that on 08-11-2003 when Dalraj Singh (deceased) was coming from Kashipur to Bajpur on his scooter and when he reached near Petrol Pump at Sultanpur Patti, a bus No. URN-9710 coming from the opposite side rashly and negligently dashed the scooter of the deceased resulting in severe injuries on his person. The deceased was taken in injured condition at Saini Clinic, Sultanpur Patti and thereafter he

was taken to Agarwal Surgical Hospital, Kashipur from where he was referred to District Hospital, Moradabad where he succumbed to his injuries on 15-11-2003. It was further alleged that the deceased was 39 years of age at the time of accident and he was doing the work of unloading the truck of Cheema Paper Mill, Kashipur. He was earning Rs. 5000/- per month.

3. The insurer of the offending bus contested the claim petition and denied its liability to pay compensation to the claimants. It was further pleaded that the driver of the offending bus was not rash and negligent at the time of accident and the accident occurred due to the rash and negligent driving of the scooterist. It was further pleaded that the scooterist was not holding a valid driving licence at the time of accident. The rest of the Respondents had not filed the written statement and the Tribunal proceeded ex-parte against them.

4. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had come to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending bus by which the deceased sustained the injuries on his person and ultimately died. The learned Tribunal had assessed the age of the deceased as 39 years. It was further held by the Tribunal that the deceased was earning a sum of Rs. 4,500/- per month. The learned Tribunal, after deducting 1/3rd of his income for personal expenses had fixed the dependency of the claimants at Rs. 3,000/- per month. Thus the annual dependency assessed by the Tribunal was Rs. 3,000/- $\times$ 12 = 36,000/-. The learned Tribunal had applied the multiplier of "16" and by doing so, the amount of compensation was assessed at Rs. 5,76,000/-. The Tribunal had also awarded Rs. 2,000/- for Funeral Expenses to the claimants. Thus, the Tribunal had awarded a sum of Rs. 5,78,000/- to the claimants as compensation. The Appellant-Insurance Company was directed to pay the aforesaid amount to the claimants within one month from the date of award alongwith interest thereon @ 5% p.a. from the date of filing of the claim petition upto the payment.

5. Feeling aggrieved by this, the Appellant-Insurance Company has preferred the present appeal.

6. Heard learned Counsel for the parties and perused the record.

7. Sri M.K. Goyal, learned Counsel for the Appellant contended that the learned Tribunal had erred in discarding the evidence of Dr. Satendra Kumar Saini-DW1 who had deposed before the Tribunal that the deceased-Dalraj Singh immediately after the incident was brought to him and he found him under the influence of alcohol. It was further submitted that the Tribunal had not considered the plea of the Appellant that the scooterist, i.e. deceased Dalraj Singh had been driving the vehicle in a drunken state and he himself was rash and negligent. Sri B.S. Parihar, learned Counsel for the Respondents refuted the contention and supported the findings recorded by the learned Tribunal. The claimants had adduced the evidence of Dharmpal-PW2 who had deposed that on 8-11-2003 at

the time of the accident, he was coming from Kashipur to Doraha, Bajpur on his motor cycle and the deceased Dalraj Singh was going ahead of his scooter at about 10:00 a.m. in the morning. It was further stated by Dharampal-PW2 that he saw that the offending bus being driven rashly and negligently dashed the scooter of Dalraj Singh and the deceased sustained the multiple injuries at the spot. The Appellant-Insurance Company adduced the evidence of doctor Satendra Kumar Saini-DW1 who had stated that on 08-11-2003 some unknown person brought Dalraj Singh in his clinic and he examined him and found him in a drunken state. He did not treat him there and he referred him at Kashipur. Chandra Pal Singh Tomar-DW2 is the investigator who had adduced the evidence in support of Insurance Company. Perusal of the record reveals that the Insurance Company had filed the written statement before the Tribunal and had not taken the plea that the deceased Dalraj Singh was in a drunken state at the time of the accident. Learned Counsel for the Appellant could not demonstrate us that the Insurance Company had pleaded this fact in its written statement. It is well settled position of law that the whole object of pleading is to give fair notice to each party of what the opponent's case is and to ascertain, with precision, the points on which the parties agree and those on which they differ and thus to bring the parties to a definite issue. The purpose of pleading is also to eradicate irrelevancy. In order to have a fair trial it is imperative that the party should state the essential facts so that other party may not be taken by surprise. The parties thus themselves know what are matters left in dispute and what facts they have to prove at the proceeding and are thus given an opportunity to bring forward such evidence as may be appropriate. The main object of pleadings is to find out and narrow down the controversy between the parties. Contentions which are not based on the pleadings cannot be permitted to be raised either at the time of arguments or at the appellate stage. Thus the evidence of Dr. Satendra Kumar Saini-DW1 cannot be taken into account at this stage. Apart from this, the doctor had examined him on 08-11-2003 and according to his evidence and it is also admitted to the learned Counsel for the Appellant that no prescription or report was prepared by Dr. Satendra Kumar Saini-DW 1. There is no such report on record prepared by Dr. Satendra Kumar Saini-DW1 which shows that he had examined Dalraj Singh. There is no document on record by which he had referred the deceased Dalraj Singh to Kashipur. If he had not prepared any certificate/prescription how he can depose before the Court during his evidence which was taken on 02-03-2006 after 2-1/2 years of the accident. The Appellant had cross examined the claimants' witnesses and he had not put any suggestion to any of the witnesses that the deceased Dalraj Singh was driving the scooter under the influence of liquor. If the Insurance Company was aware of this fact that the deceased Dalraj Singh was under the influence of liquor at the time of the accident, it could have very well put the suggestion to the claimants' witnesses. The Insurance Company, all of a sudden, after a lapse of about 2 -1/2 years produced the doctor before the court who had deposed the above fact in his evidence. Apart from this, the claimants had also filed a certificate of Agarwal Surgical and Maternity Hospital by which he was referred to

Moradabad Hospital for better treatment. Doctor also examined him and he had not found that he had consumed liquor or there was any smell of liquor from the breath of the deceased Dalraj Singh. Immediately thereafter, the deceased Dalraj Singh was examined by the Medical Officer at Moradabad Civil Hospital on the very next day of the accident and the doctor had not recorded in his injuries report that there was any sign of consuming alcohol. Ultrasound was also conducted in which there was no iota of above fact, in view of the above, we are of the considered opinion that the evidence of Dr. Satendra Kumar Saini-DW 1 is not credible and cogent. As against this, the evidence of Dharmpal-PW2 who was an eyewitness is credible and cogent. He had been cross examined at length but nothing could be elicited which goes against the claimants. We do not find any force in the contention advanced by the learned Counsel for the Appellant. We are completely in agreement with the findings recorded by the learned Tribunal that the accident occurred due to rash and negligent driving of the driver of the offending bus.

8. Learned Counsel for the Appellant contended that the learned Tribunal had erred in assessing the income of the deceased at Rs. 4,500/- p.m. It was also contended that the Tribunal had erred in holding that the age of the deceased was 39 years at the time of the accident. It was further contended that the Tribunal failed to consider that no documentary evidence regarding the age was produced before the Court. Learned Counsel for the Appellant also contended that the multiplier of "16" applied by the Tribunal is on the higher side and the amount of compensation awarded by the Tribunal is exorbitant. Learned Counsel for the Respondent refuted the contention.

9. In motor accident claim petitions, the just and proper compensation should be awarded by the Tribunal. The just and proper compensation depends upon the facts and circumstances of each case.

10. Perusal of the driving licence, produced by the claimants reveal that the date of birth of the deceased as 01-01-1967. Therefore, according to the driving licence, the age of the deceased was about 36 years. Thus the plea which has been taken by the Insurance Company that the deceased was aged about 42 years is not sustainable because the documentary evidence reveals that he was below 40 years. The claimants had adduced the evidence that the deceased used to earn Rs. 5,000/- p.m. The claimants also led the evidence before the Tribunal in the form of the ledger account maintained by Cheema Papers Ltd. and the same has been proved by Sri A.K. Babbar-PW3 which shows that the deceased earned a sum of Rs. 52,061/- during the period 01-04-2003 to 31-03-2004. Perusal of the statement reveals that there is no transaction after the death of the deceased. It is not disputed that the deceased Dalraj Singh had six minor children and he was also maintaining a scooter. The statement of about six months reveals that the deceased earned a sum of Rs. 52,061/- from the Cheema Papers Ltd. It was also contended that he was a Contractor and he earned said amount to disburse it to workers. Learned Counsel for the Appellant

had not cross examined the witness Sri A.K. Babbar-PW3 about the fact that the amount does not pertain to him for his earning. He came before the court alongwith the record. If that amount had to be disbursed, the learned Counsel for the Appellant could have very well cross examined the witnesses on this fact. Thus the evidence led by the claimants had established the income of the deceased to the extent of Rs. 4,500/- p.m. and the learned Tribunal had rightly assessed the monthly income of the deceased at Rs. 4,500/- It is also pertinent to mention here that the children of the deceased Dalraj Singh are minor and the claim petition has been filed by the brother of the deceased on behalf of the children. The petition also reveals that the minor children, namely Master Anil aged 14 years, Km. Anita aged 12 years, Km. Pooja aged 10 years, Master Digvijay aged 8 years, Km. Bhawna aged 3 years and Km. Poonam aged 16 years are only alive in the family of the deceased Dalraj Singh and they are being looked after by their uncle. One of the claimants Km. Poonam aged about 16 years is also handicap about 75%. A medical certificate issued by the Medical Board Udhham Singh Nagar is also on record. The disability has been assessed about 75%.

11. Considering that the deceased was aged about 36 years and having six children including Km. Poonam as handicap, we are satisfied that the Tribunal had rightly selected the multiplier of "16" in this case. In the case of Chellammal and Ors. v. Kailasam and Anr. reported in 2005 (11) SCC 387, the Tribunal awarded compensation of Rs. 8,08,704/- by applying the multiplier of 24. The High Court, on appeal, reduced the compensation awarded by the Tribunal to Rs. 4,91,600/- by applying multiplier to be 12. The age of the deceased was 41 years at the time of his death and the High Court has applied the multiplier of 12. When the matter came up before the Hon"ble Apex Court, it has been held that as the age of the deceased at the time of his death was 41 years, according to the Second Schedule appended to the Motor Vehicles Act, 1988, the multiplier that could have been applied was 15 and not 12.

Accordingly, the compensation was awarded by applying the multiplier of 15.

12. Thus the Tribunal had rightly assessed the monthly income of the deceased at Rs. 4,500/- p.m. or to say Rs. 4,500/- $\times$ 12 = 54,000/- per annum. After deducting 1/3 towards personal expenses of the deceased, the dependency was assessed at Rs. 36,000/- per annum. By multiplying the annual dependency of Rs. 36,000/- with the multiplier of "16", the compensation works out to Rs. 5,76,000/-. The claimants are further entitled to Rs. 2,000/- towards Funeral Expenses. Thus the claimants are entitled to receive a total sum of Rs. 5,78,000/- as compensation for the death of Dalraj Singh.

13. We do not find any infirmity either in the assessment of the income or in the selection of the multiplier by the Tribunal in the facts and circumstances of this case.

14. Learned Counsel for the Appellant further contended that the Tribunal had

erred in awarding the interest on the higher side. Learned Counsel for the Respondents contended that the interest awarded by the Tribunal @ 5% per annum is certainly on lower side. The claimants had not filed any appeal/cross objection for the enhancement of rate of interest. The interest awarded by the Tribunal cannot be held to be on the higher side keeping in view of the present rate of interest in the Bank. In our opinion, we do not find any infirmity in awarding the interest at the rate of 5% per annum.

15. In view of the above facts and circumstances, we are in agreement with the findings recorded by the learned Tribunal. The appeal filed by the Insurance Company is liable to be dismissed.

16. Accordingly, the appeal is hereby dismissed.

17. No order as to costs.