(2009) 06 UK CK 0037

In the Uttarakhand High Court

The Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Shanti Devi and Others and Ramdevi and Others RESPONDENT

Date of Decision : 08-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 06 UK CK 0037

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—Both these appeals are being heard together and decided by the common judgment, as the claims in both the appeals relate to the same accident and the facts and questions involved are common.

2. Appeal No. 389 of 2008 u/s 173 of Motor Vehicles Act, 1988 has been filed by the appellant/the Oriental Insurance Company Ltd. against the judgment and award dated 03.07.2008 passed by the Motor Accident Claims Tribunal/ District Judge, Udham Singh Nagar, in M.A.C. Case No. 26 of 2006, Smt. Shanti Devi and Ors. v. Shafiq Ahmed and Ors., whereby the Tribunal awarded a sum of Rs. 4,20,000/- in favour of the claimants and against the appellant.

3. Appeal No. 390 of 2008 u/s 173 of Motor Vehicles Act, 1988 has been filed by the appellant/the Oriental Insurance Company Ltd. against the judgment and award dated 03.07.2008 passed by the Motor Accident Claims Tribunal/ District Judge, Udham Singh Nagar, in M.A.C. Case No. 30 of 2006, Smt. Ramdei and Ors. v. Shafiq Ahmed and Ors., whereby the Tribunal awarded a sum of Rs. 4,20,000/- in favour of the claimants and against the appellant.

4. Brief facts of the case are that on 08.06.2001 at about 10:30 p.m., the deceased Ramesh and Noni Ram was coming from Village Bari and parked the scooter No. DL7S/4719 on the side of the road and standing on it, discussing with each other, suddenly, a truck bearing registration No. UP02D/3293, which was being driven by its driver in a very rash and negligent manner, hit the said

scooter, due to which Ramesh and Noni Ram sustained serious injuries and died at the spot. The report of the accident was lodged by Siyaram at Police Station Kichha. Smt. Shanti Devi W/o Late Sri Ramesh Chand and other have filed a claim petition before the Tribunal on the ground that the age of her husband on the date of accident was 35 years and he used to earn Rs. 8,000/- per month. Hence, the claimants/dependents of the deceased preferred a claim petition for a sum of Rs. 10,00,000/- as compensation. On the other hand Smt. Ramdei W/o Late Noniram and Ors. preferred a claim petition for a sum of Rs. 10,00,000/- in lieu of the death of Sri Noniram. According to the claim petition, Noniram was 35 years of age and used to earn Rs. 8,000/- by selling milk and labourer work. The claimants are the legal heirs of the deceased.

5. The notices were issued to the opposite parties. Sri Safiqq Ahmad - driver of vehicle No. UP02D/3293 contested the claim petition by filing written statement before the Tribunal denying most of the allegations made in the claim petition. He has alleged that on the date of accident, he was driving the truck in a normal speed on his side and the accident took place due to rash and negligent driving of the driver of the scooter. It ha also pleaded that the vehicle in question was insured with the Oriental Insurance Company Ltd., therefore, the liability of compensation lies upon the insurer of the vehicle.

6. Sri Ashok Kumar - owner of the truck also contested the claim petition by denying most of the allegations made in the claim petition due to lack of knowledge. He has alleged in the written statement that the accident took place due to rash and negligent of the driver of the scooter. The driver of the truck driving the truck in a normal speed on his side. It has also pleaded that the driver of the truck was having the valid and effective driving licence. It has also alleged that the vehicle was insured with the Oriental Insurance Company Ltd., therefore, the liability of compensation, if any, lies upon the insurer of the vehicle.

7. The Oriental Insurance Company Ltd. also contested the claim petition by filing written statement before the Tribunal denying most of the allegations made in the claim petition. It has also alleged that the accident took place with some unknown vehicle and the name of truck No. UP02D/3293 came into picture only to get compensation. Therefore, the insurer of the vehicle in question was not liable to pay any compensation.

8. 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 of the deceased - Ramesh for a sum of Rs. 4,20,000/- along with interest @ 7% per annum from the date of filing the claim petition till the actual date of payment vide judgment and award dated 03.07.2008. The Tribunal in the claim petition of another deceased - Noniram awarded a sum of Rs. 4,20,000/- along with conditional interest of 7% per annum vide judgment and award dated 03.07.2008.

9. Feeling aggrieved by the aforesaid judgments and awards, the appellant/the Oriental Insurance Company Ltd. preferred these appeals before this Court.

10. Heard Sri V.K. Kohli, learned Senior Advocate assisted by Sri I.P. Kohli, learned Counsel for the appellant/Insurance Company, Sri D.N. Sharma, learned counsel for the claimants/respondents and perused the record.

11. Learned Counsel for the appellant has pressed this appeal mainly on the point of quantum. Learned Counsel for the appellant has submitted before the Court that in this case accident took place in the year 2001 and the annual notional income of the deceased was to be considered as Rs. 15,000/- whereas, the Tribunal adopted the notional income of Rs. 36,000/-, which appears to be unjustified. Therefore, the amount of compensation is liable to be reduced.

12. Learned Counsel for the respondents/claimants has not made any arguments relating to the calculation of the Tribunal.

13. As far as the amount of compensation to be awarded in favour of the claimants is concerned, the Tribunal while deciding issue No. 3 discussed this aspect. The approach adopted by the Tribunal appears to be erroneous. In this case accident took place in the year 2001, at that time in the absence of any documentary and plausible evidence, the notional income could not be taken as Rs. 3,000/- per month in any case. The notional income in the year 2001 was Rs. 15,000/- per annum. The Tribunal has come to the conclusion that there is no documentary or plausible evidence available on record, which may suggest that what was the actual income of the deceased as the time of the death. Therefore, in want of any plausible evidence with regard to the income of the deceased, correct approach to be adopted and in the year 2001, the notional income can be assessed as Rs. 15,000/- per annum. After deducting 1/3rd towards personal expenses of the deceased, the financial dependency of the claimants comes to Rs. 10,000/- per annum. The record further reveals that the deceased was aged about 30 years at the time of the accident and in view of the age of the deceased, the multiplier adopted by the Tribunal appears to be justified.

14. On the basis of the aforesaid calculation, the amount of compensation comes to Rs. 1,17,000/- (10000 X 17). The amount awarded by the Tribunal under other different heads shall remain intact. Thus the total amount of compensation comes to Rs. 1,82,000/- (170000 + 1000 + 2000). The interest indicated in the impugned judgment and award shall remain intact.

15. For the reasons stated above, appeal No. 389 of 2008 is partly allowed. The impugned judgment and award is modified to the extent that the claimants are entitled for a sum of Rs. 1,82,000/- instead of Rs. 4,20,000/- as has been awarded by the Tribunal along with interest as indicated in the impugned judgment and award.

16. As I have already discussed above in the body of the judgment that in the absence of any documentary evidence, the notional income of the deceased can

be assessed as Rs. 15,000/-, in this appeal after adopting the notional income of the deceased as Rs. 15,000/- per annum and after deducting 1/3rd towards financial dependency of the deceased and considering the age of the deceased, the total amount of compensation comes to Rs. 1,07,000/- (10000 X 17). The amount awarded by the Tribunal under other different heads shall remain intact. Thus, the total amount of compensation comes to Rs. 1,82,000/- (170000 + 1000 + 2000). The interest indicated in the impugned judgment and award shall remain intact.

17. In view of the above, appeal No. 390 of 2008 is partly allowed. The impugned judgment and award is modified to the extent that the claimants are entitled for a sum of Rs. 1,82,000/- instead of Rs. 4,20,000/- as has been awarded by the Tribunal along with interest as indicated in the impugned judgment and award.

18. The statutory amount deposited by the appellants in both the appeals be remitted to the Tribunal concerned. The excess amount deposited by the appellant with the Tribunal concerned, be refunded to the Insurance Company.

19. Let the copy of this order be placed in A.O. No. 390 of 2008.