(2006) 04 UK CK 0018

In the Uttarakhand High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Anil Maikhuri and Others RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2007) ACJ 1868 : (2006) 2 UC 1101 : (2006) 1 UD 511

Hon'ble Judges : Rajeev Gupta, C.J;Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Mr. Pankaj Purohit, Advocate for the appellant.

Mr. R.P. Nautiyal, Advocate for the respondent No. 1.

None for respondent Nos. 2 to 5.

2. Though the appeal is listed today for hearing on C.L.M.A. No. 4170 of 2006, with the consent of the learned Counsel for the parties, the appeal is finally heard.

3. This is insurer''s appeal against the award dated 9.5.2005 passed by the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court-IV, Dehradun in M.A.C.T. Case No. 50 of 2004.

4. Claimant Anil Maikhuri claimed compensation of Rs. 15,30,000 for the death of his brother Sushil Kumar Maikhuri in motor accident when on 18.12.2003 his motor cycle bearing registration No. UP 07-E 3205 was dashed by the offending vehicle Ambassador car bearing registration No. UA 07-C 7637 resulting in serious injuries to Sushil Kumar Maikhuri, who was taken to Doon Hospital, where the doctors declared him dead. The claimant pleaded that the deceased Sushil Kumar Maikhuri was a promising advocate and was earning Rs. 15,000 (rupees fifteen thousand) per month from legal profession. In the claim petition, the parents of the deceased, i.e., Shambhu Prasad Maikhuri and Laxmi Devi were

impleaded as pro forma defendants.

5. The insurer and owner of the offending vehicle Ambassador car contested the claim before the Tribunal. The owner of car while admitting the accident pleaded that the accident did not occur due to negligence of the driver and as such denied his liability to pay compensation to the claimant. The insurer of the car pleaded that the driver of the car was not holding a valid driving licence and as such it was not liable to pay compensation to the claimant.

6. The Tribunal on the evidence led by the parties held that the deceased Sushil Kumar Maikhuri died on account of the injuries sustained by him in the accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Ambassador car and the insurer of the offending vehicle Ambassador car was liable to pay compensation to the parents of the deceased.

7. The Tribunal on considering the evidence led by the claimant about the income of the deceased including the income tax returns for the assessment years 2002-2003, 2003-2004 and 2004-2005 assessed the income of the deceased at Rs. 7,770 per month and Rs. 93,240 per annum. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the dependency of the parents of the deceased was assessed at Rs. 62,160. Considering that the parents of the deceased were aged about 58 years and 55 years, the Tribunal selected the multiplier of 8 and by multiplying the annual dependency of Rs. 62,160 by the multiplier of 8, the compensation was worked out to Rs. 4,97,280 which was rounded off to Rs. 4,97,000. By awarding further sum of Rs. 25,000 under other permissible heads, the Tribunal awarded a total sum of Rs. 5,22,000 as compensation to the parents of the deceased for the death of their son Sushil Kumar Maikhuri in the accident. The Tribunal awarded interest at the rate of 6 per cent per annum from the date of the application.

8. Mr. Pankaj Purohit, learned Counsel for the appellant insurance company vehemently argued that the Tribunal has erred in assessing the income of the deceased at Rs. 7,770 per month on the basis of the income tax return for the assessment year 2004-2005 alone and ignoring the income tax returns for the assessment years 2002-2003 and 2003-2004.

9. Mr. R.P. Nautiyal, learned Counsel appearing on behalf of claimant-respondent Anil Maikhuri, on the other hand, supported the award and submitted that as deceased Sushil Kumar Maikhuri was a promising lawyer, the Tribunal has rightly assessed his income on the basis of the latest income tax return.

10. The claimant pleaded that the deceased Sushil Kumar Maikhuri used to earn Rs. 15,000 per month from legal profession. It has come in the evidence that the deceased in addition to his practice as an advocate was also performing the duties of investigator of National Insurance Co. Ltd. The appellant insurance company did not lead any evidence before the Tribunal in rebuttal of the evidence led by the claimant about the income of the deceased. In this state of evidence, no fault can be found with the assessment of income of the deceased

by the Tribunal at Rs. 7,770 per month. The Tribunal, in our opinion, has rightly deducted ''/3rd of the income of the deceased as his personal expenses. The multiplier of 8 selected by the Tribunal considering the age of the parents of the deceased cannot be found fault with.

11. For the foregoing reasons, we do not find any infirmity in the award which may warrant interference in this appeal filed at the behest of the insurer.

12. The appeal, therefore, fails and is hereby dismissed. No order as to costs.

13. C.L.M.A. No. 4170 of 2006 and all other pending C.L.M.As. stand disposed of.

