
(2019) 11 UK CK 0007

In the Uttarakhand High Court

Case No : Appeal From Order No. 61, 60 Of 2011

United India Insurance Co. Ltd

APPELLANT

Vs

Lata Devi & Others

RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A

Citation : (2019) 11 UK CK 0007

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : P.S. Bisht, Naresh Pant, Mohd. Azim

Final Decision : Partly Allowed

Judgement

Sudhanshu Dhulia, J

1. Both these appeals arise out of the award dated 19.11.2010 passed by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar passed in M.A.C.P. No. 310 of 2006.
2. Appeal from Order No. 61 of 2011 has been filed by the Insurance Company and the other Appeal from Order No. 60 of 2011 has been filed by the claimants for enhancement of the award.
3. Brief facts of the case are that on 01.10.2006, when the husband of claimant no. 1, namely, Satish Kumar was standing on the side of a road and was waiting for a bus for Kashipur, at about 07:00 P.M., a Hero Honda motorcycle bearing registration no. UA 06C-6126 which was being driven by him rashly and negligently by its driver, hit the deceased, as a result of which he sustained grievous injuries. The injured Satish Kumar was taken to Government Hospital, Kashipur from where he was referred to Moradabad, and ultimately the deceased died on the way to Moradabad. The first information report of the accident was lodged on the same day i.e. on 01.10.2006 at P.S. ITI, Kashipur which was registered as Case Crime No. 4714 of 2006 under Sections 279 and 304-A of IPC.

4. On account of death of Satish Kumar in a motor accident, a claim petition was filed by the claimants before the Motor Accident Claims Tribunal, Kashipur stating that the deceased was 36 years old at the time of accident and he was working as a Farm Supervisor in the farm house of one Sri S.K. Chaturvedi and was getting a salary of Rs. 5,000/- (Rupees Five Thousand only) per month. A compensation of Rs. 8,00,000/- (Rupees Eight Lakh only) was claimed by the claimants.

5. Written statements were filed by the owner and driver of the motorcycle as well as the insurance company with which the motorcycle was insured.

6. On the basis of the pleadings of the rival parties, the learned Tribunal framed the following issues:-

"1. Whether on 1.10.2006 at about 07:00 P.M. at Kashipur-Ramnagar Road, near village Pratappur under P.S. Kashipur, District Udham Singh Nagar, the driver of the motorcycle bearing registration no. UA 06C/6126 was driving the bike rashly and negligently which hit Satish Kumar, as a result of which he died during treatment?

2. Whether at the time of accident, the driver of the motorcycle no. UA 06C/6126 was not having a valid and effective driving licence?

3. To what amount of compensation the claimants are entitled to and from which of the respondents?"

7. While deciding issue no. 1, the learned Tribunal recorded a finding that the accident in question occurred due to rash and negligent driving by the driver of the motorcycle bearing registration no. UA06C/6126, as a result of which Satish Kumar died due to injuries sustained by him in the accident. This finding of the Tribunal is based on the evidence adduced by PW 2 Vijay Kumar who is the eyewitness of the accident. This witness was put to cross-examination by the respondents, but nothing worthwhile has come out which may prove that his statements were not correct.

8. While deciding issue no. 2, the learned Tribunal recorded a finding that the rider of the motorcycle in question was having a valid and effective driving licence at the time of accident.

9. As regarding quantum of compensation, the learned Tribunal determined the notional income of the deceased as Rs. 3,000/- (Rupees Three Thousand only) per month i.e. Rs. 36,000/- (Rupees Thirty Six Thousand only) per annum. Out of this amount, one-fourth was deducted towards personal expenses, and the annual dependency income was calculated as Rs. 27,000/- (Rupees Twenty Seven Thousand only). Thereafter the learned Tribunal applied a multiplier of 15 and calculated the compensation as Rs. 4,05,000/- (Rupees Four Lakh Five Thousand only).

10. Apart from the above, the learned Tribunal also awarded a sum of Rs.

2,000/- (Rupees Two Thousand only) towards funeral expenses, a sum of Rs. 5,000/- (Rupees Five Thousand only) towards loss of consortium and a sum of Rs. 5,000/- (Rupees Five Thousand only) towards loss of estate. Thus a total amount of Rs. 4,17,000/- (Rupees Four Lakh Seventeen Thousand only) has been awarded by the Tribunal as compensation.

11. Aggrieved, the claimants have filed the present appeal for enhancement.

12. In the claim petition, the income of the deceased as Rs. 5,000/- (Rupees Five Thousand only) was set up, for which the receipts were produced before the court below. However, the learned Tribunal did not believe the said receipts and fixed the notional income of the deceased as Rs. 3000/-(Rupees Three Thousand only) per month. This Court finds no anomaly with regard to the notional income of the deceased. However, so far as the compensation awarded to the claimants towards funeral expenses, loss of consortium and loss of estate, this Court is of the considered view that the compensation on these heads has been awarded on the lower side.

13. Consequently, the amount of compensation of Rs. 2,000/- (Rupees Two Thousand only) is enhanced to Rs. 20,000/- (Rupees Twenty Thousand only), amount of compensation of Rs. 5,000/- (Rupees Five Thousand only) towards loss of consortium is enhanced to Rs. 50,000/-(Rupees Fifty Thousand only) and the amount of compensation of Rs. 5,000/- (Rupees Five Thousand only) towards loss of estate is enhanced to Rs. 50,000/- (Rupees Fifty Thousand only). Thus the claimants shall be entitled for a total compensation of Rs. 5,25,000/- (Rupees Five Lakh Fifty Thousand only).

14. The appeal of the claimants being A.O. No. 60 of 2011 is partly allowed.

15. The appeal of the claimants is partly allowed to the extent stated above and the appeal filed by the insurance company being A.O. No. 61 of 2011 is dismissed.

16. Let the amount of compensation as determined by this Court be deposited by the appellant/insurance company before the concerned Tribunal along with six per cent interest from the date of filing of the claim petition within a period of three weeks from the date of production of a certified copy of this order, after adjusting the amount already deposited. Let the statutory amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) be also remitted to the concerned Tribunal. After the amount is deposited by the Insurance Company, let the same be released in favour of the claimants forthwith.