
(2019) 12 UK CK 0117

In the Uttarakhand High Court

Case No : Appeal From Order No. 536 Of 2013

United India Insurance Co. Ltd

APPELLANT

Vs

Sarla Bajpai & Others

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Citation : (2019) 12 UK CK 0117

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Naresh Pant, Rajat Mittal

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This is an appeal filed by the Insurance Company against the award dated 30.08.2013 passed by the Motor Accident Claims Tribunal, Vikasnagar,

District Dehradun in M.A.C.P. No. 252 of 2011, whereby a compensation of Rs.11,98,100/- (Rupees Eleven Lakh Ninety Eight Thousand One

Hundred only) has been awarded to the claimants.

2. Brief facts of the case are that the motor accident, as per the records, occurred on 25.09.2011 between Dehradun and Haridwar in Uttarakhand.

On 25.09.2011, the deceased Vinay Bajpai who at the relevant time was going on his motorcycle along with his friend Satish Ranjan from Dehradun

to Haridwar. At about 05:00 PM, when they reached at a place called Chiddarwala, a Tata Sumo Vista bearing Registration No. U.K.-07T.A.-

1735, which was going in the same direction hit the back of the motorcycle, as a result of which, both the driver and the pillion rider fell from the

motorcycle and sustained grievous injuries and subsequently they were taken to

a nearby hospital called Himalayan Hospital at Jolly Grant, District Dehradun, where Vinay Bajpai was declared dead.

3. A claim petition was filed by the claimants, who are mother and sister of the deceased, claiming a compensation of Rs.20,50,000/- (Rupees Twenty Lakh Fifty Thousand only) on account of death of Vinay Bajpai in the motor accident. It was said in the claim petition that the deceased was aged

about 24 years at the time of his death and was working in MAX Mobile Company, Haridwar Unit and was getting a sum of Rs.20,000/- (Rupees

Twenty Thousand only) per month as salary. Due to sudden death of Vinay Bajpai, they have suffered mental, physical and monetary loss.

4. Written statements were filed by the owner of the vehicle, driver of the vehicle as well as by the Insurance Company.

5. On the basis of the pleadings of the rival parties, the Motor Accident Claims Tribunal framed the following issues:-

1. Whether on 25.09.2011 when the deceased was going along with his friend on the motorcycle bearing registration no. U.K.-07A.G.-9373, from

Dehradun to Haridwar on the National Highway-72, it met with an accident near a village called Chiddarwala, with a Tata Sumo Vista bearing

registration no. U.K.-07T.A.1735, which was being driven rashly and negligently by its driver, as a result of which the deceased fell down on the road

and sustained grievous injuries and ultimately died?

2. Whether at the time of accident the driver of Tata Sumo Vista bearing registration no. U.K.-07T.A.-1735 was not having a valid driving licence and

the vehicle was being driven against the terms of the insurance policy? If yes, then its effect?

3. Whether the claim petition is bad due to the non-joinder of driver, owner and insurance company of the motorcycle bearing registration no. U.K.-

07A.G.-9373?

4. Whether the claimants are entitled for any compensation? If yes, then from which of the parties and to what extent?

6. While deciding issue no. 1, the Tribunal recorded a categorical finding that the accident occurred due to rash and negligent driving of the driver of

Tata Sumo Vista bearing registration no. U.K.-07T.A.-1735 and as a result of this accident Vinay Bajpai sustained grievous injuries and ultimately

died. This finding of the Tribunal was based on the evidence placed before the

Tribunal in the form of PW-2 Situ Dobriyal, who was also going on his motorcycle at the relevant time from Haridwar to Dehradun and he saw the accident as he was about 50 meters behind the place of occurrence. This witness has given a categorical statement that Tata Sumo Vista bearing registration no. U.K.-07T.A.-1735 was being driven rashly and negligently by its driver. In his statement, this witness has also stated that he had called 108 Ambulance and at the relevant time Satish Ranjan who was a pillion rider was in some senses and he had told him that he is a resident of Bihar and the name of the driver of the motorcycle is Vinay Bajpai. Therefore, the fact that the accident did happen due to rash and negligent driving of the Tata Sumo Vista has been clearly established. This witness further stated that there was no fault on the part of the driver of the motorcycle bearing registration no. U.K.07A.G.-9373, on which contributory negligence can be fixed.

7. So far as issue no. 2 is concerned, the Tribunal came to the conclusion that the driver of the offending vehicle was having a valid driving licence at the time of accident and the vehicle was not being driven against the terms of the insurance policy.

8. As far as issue no. 3 is concerned, the Tribunal recorded a finding that since it has been fully established that the accident in question had occurred due to rash and negligent driving by the driver of Tata Sumo Vista bearing Registration No. UK-07T.A.-1735, therefore the claim petition is not bad due to the non-joinder of owner and insurance company of the motorcycle.

9. As regarding the amount of compensation, the Tribunal on the basis of the documentary evidence as well as the oral evidence in the form of PW 3

Swati Rana, who was posted as H.R. in MAX Mobile Communication Ltd., Unit â?"II, Haridwar, determined the monthly income of the deceased as

Rs.14,025/- (Rupees Fourteen Thousand Twenty Five only) i.e. Rs.1,68,300/- (Rupees One Lakh Sixty Eight Thousand Three Hundred only) per

annum. Out of this amount, one-half was deducted towards personal expenses and the annual dependency income was calculated as Rs.84,150/-

(Rupees Eighty Four Thousand One Hundred Fifty only). Then considering the age of the mother of the deceased as 45 years, a multiplier of 14 was

applied and the amount was calculated as Rs.11,78,100/- (Rupees Eleven Lakh Seventy Eight Thousand One Hundred only).

10. Apart from this, the Tribunal also awarded a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses, Rs.5,000/- (Rupees Five Thousand only) towards mental and physical agony, Rs.5,000/- (Rupees Five Thousand only) towards loss of estate and Rs.5,000/- (Rupees Five Thousand only) towards loss of love and affection. Although claim towards medical expenses was also made, but the same was not granted by the Tribunal. Thus the Tribunal has awarded a total compensation of Rs.11,98,100/- (Rupees Eleven Lakh Ninety Eight Thousand One Hundred only).

11. Aggrieved, the appellant/insurance company has filed the present appeal.

12. Learned counsel for the appellant submits that the Tribunal has wrongly determined the monthly income of the deceased. Moreover, the interest awarded by the Tribunal at the rate of nine per cent and thereafter in case the appellant fails to pay the amount within thirty days, the interest shall be payable at the rate of twelve per cent is also on the higher side.

13. On the other hand, the learned counsel for the claimants would argue that the multiplier should have been 17 instead of 14 and instead of deducting one-half amount towards personal expenses, one-third was liable to be deducted. However, since there is no appeal of the claimants, nothing can be said on this aspect. As far as interest part is concerned, this Court is of a considered view that it is perfectly valid. In fact, there is no appeal by the claimants for enhancement of the award.

14. This Court finds no ground for any interference in the matter. Consequently, the appeal fails and it is hereby dismissed.

15. Let the entire amount along with the interest as directed by the Tribunal be deposited by the insurance company with the concerned Tribunal after adjusting the amount already deposited. After the entire amount is deposited by the insurance company, let the same be released in favour of the claimants within a period of three weeks from the date of production of a certified copy of this order. The statutory amount of Rs.25,000/- (Rupees Twenty Five Thousand only) shall be also remitted to the concerned Tribunal.

16. Let a copy of this judgment along with the lower court record be sent to the concerned Tribunal for onward compliance.