
(2007) 08 UK CK 0023

In the Uttarakhand High Court

Case No : Appeal from Order No's. 144 and 272 of 2005

United India Insurance Company Limited

APPELLANT

Vs

R.T. Parashar and Others

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 170, 173

Citation : (2008) 1 UC 376

Hon'ble Judges : Rajeev Gupta, C.J.;B.C. Kandpal, J

Bench : Division Bench

Advocate : D.S. Patni, Manish Dalakoti, in Appeal from Order No. 144 of 2005 and Lalit Sharma, in Appeal from Order No. 272 of 2005, for the Appellant; Lalit Sharma, for Respondent Nos. 1 to 3 and Rajesh Joshi, in Appeal from Order No. 144 of 2005 and Rajesh Joshi and D.S. Patni and Manish Dalakoti for Respondent No. 2 in Appeal from Order No. 272 of 2005, for the Respondent

Judgement

Rajeev Gupta, C.J.—The impugned Award dated 14-01-2005 passed by Motor Accident Claims Tribunal, Dehradun in Motor Accident Claim Case No. 44 of 2004 gave rise to the filing of A.O. No. 144 of 2005 and A.O. No. 272 of 2005.

2. The Insurer of the offending vehicle - Truck i.e. United India Insurance Company Ltd. has filed A.O. No. 144 of 2005 against the Award, whereas the claimants have filed A.O. No. 272 of 2005 for enhancement of compensation awarded by the Tribunal.

3. The claimants, by filing claim petition u/s 166 of the Motor Vehicles Act, claimed compensation of Rs. 20,00,000/- for the death of Amit Parasar in the motor accident on 08-04-2003, when his motor-cycle was dashed by the offending vehicle - Truck bearing registration No. GJIX 7846 resulting in multiple serious injuries to Amit Parasar, who succumbed to those injuries during the course of his treatment in the hospital on the same day at 3.05 p.m. The claimants further pleaded that deceased Amit Parasar used to get salary of Rs. 9,500/- per month as Lecturer in Doon P.G. College of Agricultural Sciences and

Technology and was also earning further sum of Rs. 4,000/- per month from tuition.

4. The owner and insurer of the offending vehicle - Truck contested the claim and denied their liability to pay compensation to the claimants on the plea that the deceased motor-cyclist himself was responsible for the accident. The insurer further pleaded that the driver of the Truck was not holding a valid driving license and the truck was being plied in breach of the policy conditions.

5. The claimants examined P.W.1 R.T Parasar, P.W.2 Sumit Sharma, P.W.3 Rakesh Kumar Lohani, P.W.4 Ravindra Singh and P.W.5 Amba Datt Bisht in support of their case; whereas the insurer and the owner of the offending vehicle - Truck did not examine any witness in rebuttal.

6. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased Amit Parasar died on account of the injuries sustained in the motor accident on 08-04-2003; the accident occurred due to rash and negligent driving of the driver of the offending vehicle - Truck; and the insurer of the Truck was liable to pay compensation to the claimants.

7. Relying upon the evidence led by the claimants about the income of the deceased, the Tribunal assessed the income of the deceased at Rs. 13,500/- per month (Rs. 9,500/- from salary and Rs. 4,000/- from tuition) By deducting Rs. 4,500/- towards personal expenses of the deceased, the claimants' dependency was assessed at Rs. 9,000/- per month and Rs. 1,08,000/- per annum. By multiplying the annual dependency of Rs. 1,08,000/- with the multiplier of "11", the compensation was worked out to Rs. 11,88,000/-. The Tribunal awarded further amounts under other heads and thus total sum of Rs. 13,08,000/- was awarded as compensation to the claimants with interest @ 6% per annum.

8. Sri D.S. Patni and Sri Manish Dalakoti, the learned Counsel for the Appellant Insurance Company, submitted that as the Appellant insurer was granted permission by the Tribunal vide order dated 16-09-2004 u/s 170 of the Motor Vehicles Act to contest the claim on all available defences, the Appellant Insurance Company is challenging the quantum of compensation in the appeal. The learned Counsel further submitted that the Tribunal has erred in accepting the claimants' evidence about the income of Rs. 4,000/- from tuition though the evidence led by the claimants in that behalf was not reliable. The learned Counsel further submitted that the Tribunal has grossly erred in awarding huge amount under various heads, which is not permissible Under the Motor Vehicles Act.

9. Sri Lalit Sharma, the learned Counsel for the claimants, on the other hand, supported the impugned award and sought enhancement of the compensation on the ground that the Tribunal has erred in selecting the lower multiplier of "11" whereas the appropriate multiplier, according to Second Schedule u/s 163A of the Motor Vehicles Act is "13". The learned Counsel further submitted that the interest awarded by the Tribunal @ 6% per annum is too low.

10. Sri Rajesh Joshi, the learned Counsel for the owner of the offending vehicle - Truck contended that the Tribunal has rightly held the insurance company liable to pay compensation to the claimants.

11. The findings recorded by the Tribunal that the deceased Amit Parasar died on account of the injuries sustained in the motor accident on 08-04-2003 and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle - Truck are based on the eye witness account of P.W.2 Sumit Sharma. In his evidence before the Tribunal, P.W.2 Sumit Sharma has categorically stated that the driver of the offending vehicle Truck was driving the truck rashly and negligently and dashed the motor-cycle of deceased Amit Parasar, resulting in serious injuries to him leading to his death in the hospital. It is further in his evidence that the truck driver fled away after the accident. On a close scrutiny of evidence of P.W.2 Sumit Sharma, we are satisfied that the Tribunal has rightly relied upon his evidence in holding that the accident occurred due to rash and negligent driving of the driver of the offending vehicle Truck. We, therefore, uphold the findings recorded by the Tribunal in that behalf.

12. What is important in a motor accident claim case is that the compensation to be awarded by the Tribunal/Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , observed in paras 8 to 10 & 17.:

8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

17. Considering the age of the deceased and the principles indicated above, the

appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs. 4,50,000 (in round figures).

13. The claimants pleaded that the deceased was earning Rs. 13,500/- per month (Rs. 9,500/- from the salary and Rs. 4000/- from tuition).

14. So far as the salary of the deceased is concerned, the evidence of P.W. 3 Rakesh Kumar Lohani, Senior Accountant of the College is sufficient to establish that the deceased was getting salary of Rs. 9,500/- per month at the time of his accident. We, therefore, affirm the finding recorded by the Tribunal that deceased Amit Parasar was getting salary of Rs. 9,500/- per month on the date of the accident.

15. The evidence led by the claimants about the income from tuition is highly discrepant. In the claim petition, it was pleaded that the deceased was earning Rs. 4,000/- per month from tuition. In his evidence before the Tribunal, P.W.1 R.T. Parasar, father of the deceased, has stated that his son Amit Parasar was earning Rs. 6,000 - Rs. 7,000 per month from tuition. Other witness P.W.4 Ravindra Singh has stated that he used to pay Rs. 1000/- per month to the deceased for the tuition of "Mathematics". He has further stated that there were five other students in his batch, who used to pay Rs. 1000/- each to the deceased for the tuition and the timings of his batch was between 6 p.m. to 7 p.m. Yet another student was examined as PW5 Amba Datt Bisht, who has stated that he, too, was paying Rs. 1000/- per month to the deceased for the tuition of "General Forestry" and there were six other students in the batch with the timings between 7.30 p.m. to 9 p.m. Thus, if the evidence of P.W.4 Ravindra Singh and P.W.5 Amba Datt Bisht is to be believed, then the deceased was earning Rs. 13,000/- per month from the coaching of 13 students in two different batches.

16. It is impossible to reconcile the evidence of P.W.1 R.T. Parasar, P.W.4 Ravindra Singh and P.W.5 Amba Datt Bisht about the income of the deceased from tuition. In view of the above highly discrepant evidence, we are left with no other option but to discard the entire evidence of the claimants on the question of income of the deceased from tuition.

17. We, therefore, proposed to recompute the compensation awardable to the claimants taking the income of the deceased at Rs. 9,500/- per month. As the deceased was unmarried and was maintaining a motor-cycle, we deem it proper to deduct a sum of Rs. 4,500/- per month as personal expenses of the deceased from the income of Rs. 9,500/- per month assessed hereinabove. The dependency of the claimants, therefore, is assessed at Rs. 5,000/- per month and Rs. 60,000/- per annum.

18. The multiplier of "11" selected by the Tribunal is rather on the higher side in view of the dictum of the Apex Court in the case of *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, wherein it has been held that

in those cases where the claimants are parents, the multiplier should never exceed "10". In the present case the claimants were father, mother and unmarried sister of deceased Amit Parasar. It has come in the evidence that the father of the deceased was aged about 60 years whereas the mother was aged about 50 years on the date of the accident. Considering all the relevant factors, we are of the opinion that multiplier of "10" would be appropriate in the present case. By multiplying the annual dependency of Rs. 60,000/- with the multiplier of "10" the compensation works out to Rs. 6,00,000/-. The claimants are further entitled to Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss of estate.

19. Thus, the claimants become entitled to receive a total compensation of Rs. 6,00,000/- (Rs. Six Lakhs Ten Thousand only) from the Insurance Company of the offending vehicle Truck for the death of Amit Parasar in the motor accident.

20. Considering the prevalent rate of interest on fixed deposits in the Nationalised Banks, we are of the opinion that the interest ought to have been awarded @ 7% per annum. We, therefore, award interest @ 7% per annum on the amount of compensation of Rs. 6,10,000/- (Rupees Six Lakhs Ten Thousand only) from the date of filing of the claim petition till the disbursement of the compensation to the claimants.

21. For the foregoing reasons, the appeal filed by the Insurance Company i.e. A.O. No. 144 of 2005 is allowed in part. The compensation of Rs. 13,08,000/- awarded by the Tribunal is reduced to Rs. 6,10,000/-. The interest awarded by the Tribunal @ 6% per annum is enhanced to 7% per annum.

22. The Appellant Insurance Company, vide order dated 04-04-2005, was directed to deposit a sum of Rs. 7,00,000/- before the Claims Tribunal. The learned Counsel for the Insurance Company submits that the amount of Rs. 7,00,000/- was deposited before the concerning Claims Tribunal on 17-05-2005. The balance amount, if any, after the disbursement of the compensation of Rs. 6,10,000/- and interest thereon @7% per annum to the claimants, shall be released in favour of the Appellant Insurance Company.

23. The amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) deposited by the Appellant Insurance Company as mandatory deposit u/s 173 of the Motor Vehicles Act be remitted to the concerning Claims Tribunal immediately.

24. With the above directions, the appeal filed by the claimants for enhancement of compensation i.e. A.O. No. 272 of 2005 also stands disposed of.

25. No order as to costs.