(2009) 05 UK CK 0045

In the Uttarakhand High Court

United India Insurance Company Ltd. APPELLANT

Vs

Smt. Basanti Devi and Others RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 05 UK CK 0045

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicle Act, 1988 has been filed by the appellant/insurer of vehicle No. UP03/0324 against the judgment and award dated 14.12.2007 passed by Motor Accident Claims Tribunal/District Judge, Pithoragarh in Motor Accident Claims Case No. 70 of 2006, Smt. Basanti Devi and Ors. v. Gopal Datt Joshi and Ors..

2. Brief facts of the case are that on 10.02.2000, the deceased - Kaley Singh and Bhim Bahadur were travelling in truck No. UP03/0324 for taking Bajri from Lachhor to Jajar Deval. The deceased - Kaley Singh was engaged by the owner of the house (under construction) in order to take the Bajri from Lachhor. At about 08:00 p.m., when the said truck reached near Lachhor, the said truck met with an accident in which, the Bhim Bahadur died. According to the claim petition, the deceased was 32 years of age and used to earn Rs. 3,000/- per month by labourer work. The claimants are the dependent upon the deceased. Therefore, the claimants filed the claim petition before the Tribunal for a sum of Rs. 4,98,000/- as compensation.

3. Thereafter, notices were issued to the opposite parties. The opposite party No. 1 - Gopal Dutt Joshi/owner of truck No. UP03/0324 contested the claim petition by filing written statement before the Tribunal denying most of the allegations made in the claim petition. It has further stated that on the date of accident, the driver of the vehicle in question was driving the vehicle in a slow speed and the accident took place due to technical failure. It has further pleaded that on the

date of accident, the vehicle in question was insured with the United India Insurance Company Ltd., therefore, the liability of compensation, if any, lies upon the insurer of the vehicle.

4. The opposite party No. 2 - United India Insurance Company Ltd./insurer also contested the claim petition on the ground that the claimants have not produced the first information report, site plan, postmortem report etc. before the Tribunal. It has further alleged that the vehicle was being plied in breach of policy. It has also stated that the driver of the vehicle was not having the valid driving licence and the amount claimed is too excessive. Therefore, the insurer of the vehicle was not liable to pay any compensation.

5. On the basis of the pleadings of the parties, the Claims Tribunal has framed five issues. Thereafter, both the parties led evidence in support of their case. Ultimately, the Claims Tribunal after hearing learned Counsel for the parties and perusing the entire material available on record decreed the claim petition for a sum of Rs. 4,20,000/- along with interest @ 6% per annum vide judgment and order dated 14.12.2007.

6. Feeling aggrieved by the aforesaid judgment and award, the appellant/United India Insurance Company Ltd. preferred this appeal before this Court.

7. Heard Sri Pankaj Purohit, learned Counsel for the appellant, Sri Amit Kapri, learned Counsel for the respondent Nos. 1 to 3, Smt. Pushpa Joshi, learned Counsel for the respondent No. 4 and perused the record.

8. While deciding the issue No. 1 relating to the rash and negligence of the driver of the vehicle in question, the Tribunal has considered the statement of Basant Punetha (P.W.2) who was the actual eyewitness of the accident, who has stated that on the date of accident, the said which was being driven by its driver in a very rash and negligent manner met with an accident in which Kale Bhan has died. The Tribunal on the basis of the material available on record rightly held that the accident took place due to rash and negligent driving of vehicle No. UP03/0324. I am in total agreement with the finding recorded by the Tribunal.

9. While deciding the issue No. 2 relating to the driving licence of the driver of the vehicle in question, the Tribunal on the basis of the paper No. 34C/1, which is photocopy of driving licence, has came to the conclusion that the driver of the truck No. UP06/0324 was having the valid and effective driving licence. The Tribunal has rightly decided this issue and needs no interference. It is also not disputed that on the date of accident, the vehicle in question was insured with the United India Insurance Company Ltd.

10. Learned Counsel for the appellant has submitted that the deceased was travelling in the vehicle in question as a gratuitous passenger, therefore, the claimants are not entitled for any compensation as the deceased was travelling in the vehicle as a gratuitous passenger.

11. I do not find any force in the submission advanced by learned Counsel for the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-company-ltd-…

appellant. It is clear from the perusal of the record that he was engaged by one Ravindra Chandra in order to take the Bajri for the construction of his house. The deceased was coming in the vehicle along with the material, therefore, it cannot be said that on the date of accident, the deceased was travelling as a gratuitous passenger in the vehicle in question.

12. Learned Counsel for the appellant/United India Insurance Company Ltd. has submitted before the Court that the Tribunal without considering the evidence available on record has assessed the monthly income of the deceased on the higher side. He has further submitted that the Tribunal without any income proof took the monthly income of the deceased, which is unjustified. He has also submitted that the Tribunal taken the multiplier of ''17'', which also appears on the higher side.

13. Sri Amit Kapri, learned Counsel for the respondents/claimants has made the rival contention and has submitted that the Tribunal after considering the entire material available on record as well as considering the statement of the witnesses rightly calculated the amount of compensation. He has further submitted that the impugned judgment and award is perfectly justified.

14. As far as the amount of compensation to be awarded to the claimants is concerned, according to the claim petition, the claimants have taken the plea therein that the deceased had been earning Rs. 3,000/- per month from his job. The deceased was doing the labourer work in order to feed the requirement of his family. In the absence of any documentary evidence, the Tribunal has considered the notional income of the deceased as Rs. 3,000/- and after deducting 1/3rd towards personal expenses, the annual dependency of the claimant comes to Rs. 24,000/-. It is not disputed that the deceased was 32 years of age on the date of accident, therefore, the Tribunal adopted the multiplier of ''17'' in order to calculate the amount of compensation. Keeping in view the age of the deceased as well as in the light of the judgment of the Hon''ble Apex court in The New India Assurance Company Ltd. v. Smt. Kalpana and Ors. reported in (2007) 2 SCC (Cri) 94; T.N. State Transport Corporation v. S. Rajapriya and Ors. reported in (2005) 6 SCC 276 and The Managing Director, TNSTC v. Sripriya and Ors. reported in 2007 (5) Sup 301, the multiplier cannot travel more than ''14'' in any manner in the instant case. After applying the multiplier of ''14'', the total amount of compensation to be awarded in favour of the claimants comes to Rs. 3,36,000/- (24000 X 14). The amount awarded by the Tribunal under different heads shall remain intact (Rs. 2000 + 5000 + 5000). Thus, the claimants are entitled to get the total amount of compensation as Rs. 3,48,000/- along with interest @ 6% per annum from the date of filing the claim petition till the actual payment.

15. In view of the above discussion, the appeal is partly allowed. The impugned judgment and award is modified to the extent that the claimants are entitled for a sum of Rs. 3,48,000/- instead of Rs. 4,20,000/- along with interest @ 6% 6 per annum from the date of filing the claim petition, till the actual date of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-company-ltd-…

payment.

16. The statutory amount deposited by the appellant before this Court be remitted to the Tribunal concerned.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/united-india-insurance-company-ltd-…