(2008) 01 UK CK 0002

In the Uttarakhand High Court

Case No : Appeal From Order No''s. 281 and 490 of 2007

United India Insurance Company Ltd. — APPELLANT

Vs

Smt. Ganga Devi and Others — RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 8 UC 895

Hon'ble Judges : Rajeev Gupta, C.J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : D.S. Patni and Manish Dalakoti, in Appeal From Order No. 281 of 2007 and B.S. Parihar and Mohd. Azim, in Appeal From Order No. 490 of 2007, for the Appellant; B.S. Parihar and Mohd. Azim for Respondents Nos. 1 to 8 in Appeal From Order No. 281 of 2007 and Manav Sharma, in Appeal From Order No. 490 of 2007 and Respondent 9 in Appeal From Order No. 281 of 2007 and K.K. Shah, in Appeal From Order No. 490 of 2007, for the Respondent

Judgement

Rajeev Gupta, C.J.—The impugned Award dated 12-04-2007 passed by Motor Accident Claims Tribunal/Addl. District Judge, Udham Singh Nagar- Rudrapur in Motor Accident Claim Petition No. 2 of 2006 has given rise to the filing of these two appeals i.e. A.O. No. 281 of 2007 and A.O. No. 490 of 2007.

2. A.O. No. 281 of 2007 has been filed by the insurer of the offending vehicle Tractor against the Award, whereas A.O. No. 490 of 2007 is at the behest of the claimants for enhancement of the compensation awarded by the Tribunal.

3. The claimants, who are unfortunate widow, minor children and mother of deceased Kishan Lal, claimed compensation of Rs. 19,22,000/-, by filing a claim petition u/s 166 of the Motor Vehicles Act, 1988, for his death in the motor accident on 25-11-2005, when he was dashed by the offending vehicle Tractor bearing registration No. UP 04-B-3667 resulting in serious injuries to Kishan Lal, who succumbed to those injuries on the spot itself. A report about the accident was lodged against the driver of the Tractor (Hardev Singh) at Police Station

Bazpur. It was further pleaded in the claim petition that deceased Kishan Lal was aged about 39 years and used to earn Rs. 6,000/- per month as Mason.

4. The owner and insurer of the offending vehicle Tractor contested the claim and denied their liability to pay compensation to the claimants. The owner of the Tractor took the plea that the deceased himself was negligent and as such was responsible for the accident. It was further pleaded that the liability, if any, to pay compensation to the claimants was that of the Insurance Company, as the Tractor was insured at the time of the accident. The insurer, on the other hand, pleaded that the Tractor was being plied in breach of the policy conditions and the driver of the Tractor was not holding a valid driving license.

5. The claimants examined PW1 Ganga Devi and PW2 Hari Singh in support of their claim, whereas the owner and insurer of the offending vehicle Tractor did not examine any witness in rebuttal.

6. The Tribunal, on the evidence led by the claimants, held that deceased Kishan Lal died on account of the injuries sustained by him in the motor accident on 25-11-2005; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Tractor; and, as the Tractor was insured at the time of the accident, the Insurance Company was liable to pay compensation to the claimants.

7. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 4,500/- per month on its own estimate. By deducting 1/3rd of Rs. 4,500/- per month as the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 3,000/- per month and Rs. 36,000/- per annum. By multiplying the annual dependency of Rs. 36,000/- with the multiplier of ''16'', the compensation was worked out to Rs. 5,76,000/-. The Tribunal, in addition to the above, awarded a sum of Rs. 2,000/- towards Funeral Expenses; Rs. 5,000/- for Loss of Consortium to the widow; and Rs. 2,500/- towards Loss of Estate. The Tribunal, thus, awarded a total sum of Rs. 5,85,500/- as compensation to the claimants for the death of Kishan Lal in the motor accident. The Tribunal further directed the Insurance Company to pay interest on the above amount of compensation of Rs. 5,85,500/- at the rate of 7% per annum from the date of the filing of the claim petition till payment.

8. Mr. D.S. Patni, the learned Counsel for the Appellant Insurance Company in A.O. No. 281 of 2007 vehemently argued that the Tribunal has erred in assessing the income of the deceased at Rs. 4,500/- per month and the claimants'' dependency at Rs. 3,000/- per month and Rs. 36,000/- per annum in selecting the higher multiplier of ''16'' and in awarding higher compensation of Rs. 5,85,500/- to the claimants.

9. Mr. B.S. Parihar and Mr. Mohd. Azim, the learned Counsel for the Appellants/ claimants in A.O. No. 490 of 2007, on the other hand, contended that the Tribunal has erred in not accepting the claimants'' evidence about the income of

the deceased and in awarding low compensation of Rs. 5,85,500/- only to the claimants.

10. Mr. K.K. Shah, the learned Counsel for the Insurance Company in the appeal filed by the claimants for enhancement (A.O. No. 490 of 2007) supported the submissions advanced by Mr. D.S. Patni in the appeal filed by the Insurance Company (A.O. No. 281 of 2007).

11. The findings, recorded by the Tribunal, that deceased Kishan Lal died on account of the injuries sustained by him in the motor accident on 25-11-2005 and the driver of the Tractor was responsible for the accident are based on the eye-witness account of PW2 Hari Singh. He has categorically deposed that deceased Kishan Lal was standing near the motorcycle when the driver of the Tractor brought his Tractor rashly and negligently and dashed Kishan Lal. Nothing could be brought out in his cross-examination, which may render his evidence unworthy of credence. As, according to this witness, deceased Kishan Lal was standing near the Motorcycle and the Motorcycle was stationary at the time of the accident, there is no question of any contributory negligence on the part of the Motorcyclist or Kishan Lal. On a close scrutiny of the evidence of PW2 Hari Singh, we are satisfied that the Tribunal ha rightly held that the driver of the Tractor, alone, was responsible for the accident. We, therefore, affirm the finding recorded by the Tribunal in that behalf.

12. As the Tractor, admittedly, was insured with the Insurance Company at the time of the accident and the Insurance Company could not prove breach of any of the policy conditions, the Tribunal has rightly held the Insurance Company liable to pay compensation to the claimants.

13. True, the claimants, in their claim petition, pleaded that deceased Kishan Lal used to earn Rs. 6,000/- per month, but no convincing evidence was led by them before the Tribunal in support of the income of the deceased at Rs. 6,000/- per month.

14. The Apex Court, in case of The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , in somewhat similar situation while assessing the income of the deceased and the dependency of the claimants, observed in para 12:

12. Considering the age of the deceased it would be appropriate to fix the multiplier at 13. MACT itself found that the income was not established. At some point of time it was stated that the income of the deceased was Rs. 6000/- per month. In the absence of any definite material about the income, monthly contribution to the family, after deduction for personal expenses is fixed at Rs. 3000 per moth i.e. annually Rs. 36,000. Applying the multiplier of 13, the compensation works out to Rs. 4,68,000. The same shall carry interest @ 6% p.a. from the date of claim till the date of actual payment. It is stated that a sum of rupees four lakhs has been deposited pursuant to the order dated 4-4-2005. Balance shall be deposited along with interest within two months from today. Out

of the total amount, 80% shall be kept in fixed deposit in a nationalised bank initially for a period of five years. But no withdrawal shall be permitted before the expiry of period. However, monthly interest shall be paid to the claimants.

15. Following the above-quoted dictum of the Apex Court in the case of New India Assurance Company Ltd. v. Kalpana (Smt.) and Ors. (supra), we affirm the assessment of the claimants'' dependency by the Tribunal at Rs. 3,000/- per month and Rs. 36,000/- per annum.

16. The selection of multiplier of ''16'' by the Tribunal, considering that deceased Kishan Lal was aged about 39 years on the date of the accident, is certainly on the higher side. Considering that the claimants are the widow of Kishan Lal and his 6 minor children, in our opinion, multiplier of ''13'' would be appropriate in the case.

17. By multiplying the annual dependency of Rs. 36,000/- with the multiplier of ''13'', the compensation works out to Rs. 4,68,000/-. The claimants are further entitled to Rs. 5,000/-towards Funeral Expenses; Rs. 5,000/- towards Loss of Estate and Rs. 5,000/- towards Loss of Consortium to the widow. Thus, the claimants become entitled to a total sum of Rs. 4,83,000/- for the death of Kishan Lal. In the motor accident on 25-11-2005.

18. The award of interest at the rate of 7% per annum by the Tribunal, being just and proper, is affirmed.

19. For the forgoing reasons, the impugned Award dated 12-04-2007, passed in Motor Accident Claim Petition No. 2 of 2006, is modified to the extent that the amount of compensation of Rs. 5,85,5000/-, awarded by the Tribunal, is reduced to Rs. 4,83,000/-.

20. The Insurance Company is reported to have deposited a sum of Rs. 5,60,500/- on 03-08-2007 before the concerning Claims Tribunal. Asum of Rs. 25,000/- was deposited by the Insurance Company as mandatory deposit in the Registry of this Court at the time of filing of the appeal (A.O. No. 281 of 2007).''

21. The Registry is directed to remit the amount of Rs. 25,000/-, deposited by the Appellant Insurance Company in A.O. No. 281 of 2007 as mandatory deposit, to the concerning Claims Tribunal immediately.

22. The compensation of Rs. 4,83,000/- (Rupees Four Lakhs and Eighty Three Thousand only), now awarded, with interest thereon, shall be disbursed/ deposited/apportioned among the claimants in the same ratio as directed by the Tribunal in the impugned Award.

23. With the above directions, both the appeals, i.e. A.O. No. 281 of 2007 and A.O. No. 490 of 2007, stand disposed of.

24. Consequently, CLMA No. 2636 of 2007, filed in A.O. No. 281 of 2007, also stands disposed of.

25. No order as to costs.

