(2007) 03 UK CK 0066

In the Uttarakhand High Court

Case No : Appeal from Order No. 824 of 2006

United Insurance Company Ltd. — APPELLANT

Vs

Narendra Singh and Others — RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

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

Citation : (2007) 03 UK CK 0066

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

Bench : Division Bench

Advocate : D.S. Patni and Manish Dalakoti, for the Appellant; B.D. Upadhyaya, for Respondents Nos. 1/1, 1/2 and 2 to 4, for the Respondent

Judgement

Rajeev Gupta, C.J.—This is insurer''s appeal against Award dated 21-09-2006 passed by Motor Accident Claims Tribunal/District Judge, Champawat in M.A.C.C. No. 10 of 2006.

2. The claimants, who are unfortunate parents and brothers of deceased Vikram Singh, claimed compensation of Rs. 13,60,000/- for his death in the motor accident on 716-04-2006 when his cycle was dashed by the offending vehicle Shaktiman Truck bearing registration No. U.P.-29-1285 resulting in serious injuries to Vikram Singh, who succumbed to those injuries on his way to the hospital. The claimants pleaded that deceased Vikram Singh was aged about 27 years and used to earn Rs. 4,000/- per month as Truck Cleaner.

3. The owner and insurer of the offending vehicle Shaktiman Truck contested the claim and denied their liability to pay compensation to the claimants on the plea that the deceased himself was negligent and, as such, was responsible for the accident. The insurer, further, pleaded that the Truck was being plied in breach of the policy conditions and the driver of the Truck was not holding a valid driving license.

4. The claimants examined PW1 Hari Singh, PW2 Bhupendra Shahi and PW3

Mitradev Joshi in support of their claim, whereas the owner and insurer of the offending vehicle Shaktiman Truck did not examine any witness in rebuttal.

5. The Tribunal, on the evidence led by the parties, held that deceased Vikram Singh died on account of the injuries sustained by him in the motor accident on 16-04-2006; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Shaktiman Truck; and the insurer of the offending vehicle Shaktiman Truck was liable to pay compensation to the claimants.

6. The Tribunal, on a thorough scrutiny of the evidence led by the claimants about the income of the deceased, including his salary certificate, assessed his income at Rs. 3,000/- per month and Rs. 36,000/- per annum. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 24,000/- per annum. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of ''13'', the compensation was worked out to Rs. 3,12,000/-. The Tribunal further awarded Rs. 7,000/- under other Heads and thus, a total sum of Rs. 3,19,000/- was awarded as compensation to the claimants for the death of Vikram Singh in the motor accident on 16-04-2006. The Tribunal, further, directed the insurer of the offending vehicle Shaktiman Truck to pay interest at the rate of 6% per annum from the date of the claim petition till payment of the compensation.

7. Mr. D.S. Patni, the learned Counsel for the Appellant Insurance Company, placing reliance on the dictum of the Apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , submitted that the Tribunal has erred in selecting the higher multiplier of ''13''. The learned Counsel further submitted that as the Appellant Insurance Company was granted permission u/s 170 of the Motor Vehicles Act, 1988 by the Tribunal vide order dated 04-09-2006 to contest the claim on all available defences, the quantum of compensation is being challenged in this appeal.

8. Mr. B.D. Upadhyaya, the learned Counsel for the Respondent/claimants, on the other hand, supported the Award and submitted that the multiplier of ''13'', selected by the Tribunal, is in consonance with the Second Schedule u/s 163-A of the Motor Vehicles Act.

9. The findings recorded by the Tribunal that deceased Vikram Singh died on account of the injuries sustained by him in the motor accident on 16-04-2006; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Shaktiman Truck; and the insurer of the offending vehicle Shaktiman Truck is liable to pay compensation to the claimants, are not under challenge before us in this appeal. Even otherwise, there is overwhelming evidence on record in support of the above findings recorded by the Tribunal. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

10. Deceased Vikram Singh, being aged about 27 years, could have easily earned Rs. 100-125 per day even by working as an unskilled labourer. The assessment of the income of the deceased by the Tribunal at Rs. 3,000/- per

month and Rs. 36,000/- per annum, therefore, does not suffer from any infirmity at all. Similarly, the dependency of the claimants has been rightly assessed by the Tribunal at Rs. 24,000/- per annum by deducting 1/3rd of Rs. 36,000/- as personal expenses of the deceased. We, therefore, affirm the assessment of the income of the deceased of Rs. 36,000/- per annum and the claimants'' dependency at Rs. 24,000/- per annum by the Tribunal.

11. The Appellant''s counsel, placing reliance on the dictum of the Apex Court in the case of Laxman Iyer (supra), contended that as the claimants were parents and brothers of the deceased Vikram Singh, the multiplier of ''13'', selected by the Tribunal, is on the higher side.

12. In the case of Laxman Iyer (supra), the Apex Court, while considering the appropriate multiplier in those cases, where the claimants are parents of the deceased, observed in para 12:

12. Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs. 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation.

13. Now reverting to the present case, deceased Vikram Singh was aged about 27 years on the date of the accident, whereas his parents have been shown as aged about 58 years and 49 years in the claim petition. His two younger brothers Devendra Singh and Surendra Singh were 25 years and 20 years respectively. The Apex Court, in the above-quoted case of Laxman Iyer (supra), has held that in those cases, where the claimants are the parents of the deceased, the multiplier should not exceed ''10''. In the present case, it is apparent from the record that Hah Singh (father of deceased Vikram Singh) had his own income from agricultural land. In this view of the matter, we are of the opinion that multiplier of ''10''would be appropriate in the case.

14. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of ''10'', the compensation works out to Rs. 2,40,000/-. The claimants are further entitled to Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of

Estate. Thus, the claimants become entitled to total sum of Rs. 2,50,000/- as compensation for the death of Vikram Singh in the motor accident.

15. The interest, awarded by the Tribunal at the rate of 6% per annum, does not call for any interference in this appeal.

16. For the foregoing reasons, the appeal filed by the insurer is allowed in part. The compensation of Rs. 3,19,000/- awarded by the Tribunal is modified to Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only). The claimants shall be entitled to receive interest at the rate of 6% per annum on the above amount of compensation of Rs. 2,50,000/- from the date of the claim petition till the date of payment of compensation to the claimants by the Tribunal in compliance of this judgment.

17. The Registry is directed to remit the amount of Rs. 25,000/-, deposited by the Appellant Insurance Company as mandatory deposit u/s 173 of the Motor Vehicles Act, to the concerning Claims Tribunal immediately.

18. The Tribunal, after payment of compensation of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) and interest at the rate of 6% per annum on this amount of compensation to the claimants, shall release the balance amount, if any, in favour of the Appellant Insurance Company.

19. No order as to costs.

