
(2006) 09 UK CK 0017

In the Uttarakhand High Court

Case No : Appeal from Order No. 85 of 2005

Uttaranchal Rajya Parivahan Nigam

APPELLANT

Vs

Harish Chandra and Others

RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 09 UK CK 0017

Hon'ble Judges : Rajeev Gupta, C.J.;Rajesh Tandon, J

Bench : Division Bench

Advocate : A.N. Sharma, for the Appellant; B.D. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—This appeal is against the Award dated 20-11-2004, passed by the Motor Accident Claims Tribunal, Almora.

2. The claimants Harish Chandra and others preferred a claim petition u/s 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Smt. Kamla Devi in a motor vehicle accident. According to the claimants on the fateful day on 9-2-2004, the deceased was travelling by the Bus No. UP 02C-7055. The bus was being driven by its driver rashly and negligently under the influence of liquor, with the result when the vehicle reached near village Matela, it fell down into a ditch. The deceased sustained multiple injuries. She was taken to the Civil Hospital, Ranikhet along with other injured from where she was referred to Haldwani, again from Haldwani she was referred to Bareilly and admitted in the Hospital but was discharged on 16-2-2004. When she was being taken back to her village, she succumbed to her injuries in the way.

3. Opposite parties, 1 and 2, filed their joint written statement and submitted that the accident did not take place due to rash and negligent driving by the bus driver but at the time of accident a scooter suddenly came in front of the bus and in order to save the scooter the driver applied brakes and lost control over the

bus.

4. In order to prove their case, the claimants have examined claimant No. 1, Harish Chandra and filed documentary evidence. Opposite parties have neither filed documentary evidence nor have examined any witness.

5. On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the Bus. The claims Tribunal has given finding that the counsel for O.P. No. 1 and 2 conceded that several other persons who sustained injuries etc. have filed claim petitions and in those cases, there is evidence to the effect that the accident took place on account of rashness and negligence of the driver. Falling of the bus in the ditch by itself is a circumstance to indicate that the driver of the bus had no effective control over the bus. As per principle of *res ipsa loquitur*, unless otherwise proved, falling of a bus itself a circumstance to infer that the driver was rash and negligent.

So far as the compensation is concerned the Tribunal has recorded finding that at the time of accident the age of the deceased was 34 years. The Claims Tribunal held the annual income of the deceased as Rs. 15,000/- in the absence of any documentary proof and after deducting 1/3 of the amount for self expenses of the deceased if she would have been alive, the annual dependency was held to be Rs. 10,000/- per month (sic). Considering the age of the deceased a multiplier of 17 was taken and thus the amount of compensation was calculated as 1,70,000/-. A sum of Rs. 50,000/- was awarded towards expenses incurred in the treatment of deceased. A sum of Rs. 5,000/- was awarded as consortium and Rs. 2,000/- for funeral expenses. Thus a total amount of compensation of Rs. 2,27,000/- was awarded to the claimants along with pendente lite and future interest at the rate of 9% per annum.

6. Sri A.N. Sharma, the learned Counsel for the Appellant submitted that the Tribunal has erred in selecting the higher multiplier of 17 in assessing the compensation. He further argued that the amount of compensation paid to the claimants is excessive.

7. The findings recorded by the Tribunal that the deceased Smt. Kamla Devi died on account of the injuries sustained in the motor vehicle accident on 9-2-2003 and that the driver of the offending vehicle Bus was responsible for the accident are based on evidence on record. On the close scrutiny of the evidence available on record, we are satisfied that the Tribunal has rightly held that the accident had taken place due to the rash and negligent driving by the Bus driver.

8. In the absence of any documentary evidence the income of the deceased was fixed according to the second schedule of the Motor Vehicles Act for Rs. 15,000/- per annum and after deducting Rs. 5,000/- for self expenses of the deceased the annual loss of dependency was calculated at Rs. 10,000/-.

9. At the time of accident the age of the deceased was 35 years and as per

schedule the Claims Tribunal has rightly selected the multiplier of 17 for calculating the amount of compensation.

10. Apex Court in the case U.P.S.R.T.C. v. Krishna Bala and Ors. 2006 (64) ALR 771 has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

11. The claimants have produced receipts of Rs. 34,000/- for the expenses incurred in the treatment of the deceased. The deceased was treated in various hospitals for five days, The Claims Tribunal has awarded a consolidated amount of Rs. 50,000/- for the expenses incurred in the treatment of the deceased, which is not excessive at all. The Claims Tribunal has also awarded Rs. 5,000/- towards loss of consortium and Rs. 2,000/- for funeral expenses. Thus the Claims Tribunal has awarded (Rs. 1,70,000 + 50,000 + 5,000 + 2,000) = Rs. 2,27,000/-, which is neither excessive nor exorbitant in the facts and circumstances of the case. Thus we find no infirmity or illegality in the order of the Tribunal.

12. The appeal, therefore, lacks merit and is hereby dismissed.

13. No order as to costs.