(2007) 10 UK CK 0019

In the Uttarakhand High Court

Uttaranchal State Road Transport Corporation — APPELLANT

Vs

Mahendra Kumar, Abhishekh Agarwal and Oriental Insurance Company Ltd. — RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2007) 10 UK CK 0019

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Judgement

Rajesh Tandon, J.—Heard Sri A.N. Sharma counsel for the appellant, Sri Sanjeev Singh, counsel for respondent No. 1 and 2 and Sri Deepak Rawat counsel for the respondent No. 3.

2. This appeal has been preferred against the Award dated 8.11.2006, passed by the Motor Accident Claims Tribunal, Haridwar.

3. The claimant Mahendra Kumar preferred a claim petition u/s 166 of the Motor Vehicles Act, for the grant of compensation on account of the injuries sustained by the claimant in a motor vehicle accident. According to the claimant on the fateful day on 23.5.2005, he was going to Dehradun by truck No. UA 09A-6863 which was, collided with Bus No. UA 07 H 1973 near Neelkanth Dham due to which the claimant sustained grievous injuries. According to the claimant the bus was being driven rashly and negligently at the time of accident. The accident was head-on collision.

4. Opposite parties 1 Uttaranchal State Road Transport Corporation filed written statement and submitted that the accident did not take place due to rash and negligent driving of the bus driver. The accident had taken place due to rash and negligent driving by the truck driver.

4. Respondent No. 2 Abhisekh Agarwal in his written statement pleaded ignorance about the facts mentioned in the claim petition and submitted that the

truck was insured with the Oriental Insurance Company and the insured is liable to pay compensation, if any.

5. In order to prove their case, the claimants have examined himself as P.W. 1, and Sri Rizwan as P.W. 2. The claimant has also filed copy of F.I.R. post mortem report, death certificate, copy of driving licence of the truck driver, insurance cover note and disability certificate. Opposite parties have examined D.W. 1 Dinesh Kumar, Driver of the bus in defence. On the basis of the evidence adduced by the claimant, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the Bus.

6. So far as the compensation is concerned the Tribunal has recorded a finding that at the time of accident the age of the injured was 35 years. The Claims Tribunal assessed the compensation on the basis of notional income of Rs. 15,000/-. One third amount has been deducted for his own expenses by the injured. The Claims Tribunal selected a multiplier of 15 and thus assessed a compensation of Rs. 1,50,000/-. Rs. 23,000/-has been awarded for the actual expenses incurred in the treatment and Rs. 2,000/- has been awarded for other expenses and thus a total sum of Rs. 1,75,000/- was awarded to the claimant along with pendente lite and future interest at the rate of 5% per annum.

7. Counsel for the appellant has submitted that the Tribunal has erred in selecting the higher multiplier of 15 in assessing the compensation. He further argued that the amount of compensation paid to the claimants is excessive. In as much as the claimant was found 70% disabled but no deduction was made from the total amount of compensation for proportionate percentage of disability.

8. No documentary evidence regarding the income of the claimant has been filed, therefore, the Claims Tribunal has assessed the compensation on the basis of notional income of Rs. 15,000/- per annum. However, the Claims Tribunal has deducted one-third amount from the notional income, which cannot be justified in the case where the victim himself is claimant.

9. At the time of accident the age of the deceased was 35 years. Thus a multiplier of 15 would be appropriate in this case. Thus by multiplying the annual income with selected multiplier and after deducting 30% amount a sum of (15000 x 15)- (30 x 1/100) = Rs. 1,57,500.00. The petitioner is also entitled to get Rs. 23,000/- towards the expenses incurred in his treatment and Rs. 2,000/- for pain and suffering. Thus the claimant is entitled to get a compensation of 1,57,500 + 23000 + 2000 = Rs. 1,82,500/-.

10. The Claims Tribunal has awarded a total sum of Rs. 1,75,000/- as compensation. Thus even after deducting 30% amount for proportionate percentage of disability, the amount of compensation comes not less than the amount awarded by the Claims Tribunal. No appeal for enhancement has been filed by the claimant, therefore, the amount of award cannot be enhanced at the appellate stage.

11. Counsel for the appellant has submitted that the Tribunal has not made mandatory deduction of 30% from the amount of compensation and, therefore, appeal to that extent has to be allowed.

12. Even after deducting 30% of the amount from the total compensation i.e. (15000 x 15)- (30 x 1/100) = Rs. 1,57,500.00 and further adding Rs. 23,000/- towards the expenses incurred in his treatment and Rs. 2,000/- for pain and suffering the compensation comes to Rs. 1,82,500/-, which is in excess of the amount awarded by the Tribunal.

13. The result is that taking into consideration the aforesaid deduction of 30% from the amount of compensation, the compensation awarded by the Tribunal cannot be said to be unreasonable. Even the appeal succeeds on the ground of 30% deduction; the same will not affect the award. The appeal, therefore, is disposed of accordingly. No order as to costs.