
(2007) 12 UK CK 0025

In the Uttarakhand High Court

Case No : Appeal from Order No. 753 of 2006

Uttaranchal Transport Corp.

APPELLANT

Vs

Smt. Nikita Gurung and Others

RESPONDENT

Date of Decision : 26-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (2008) 1 UC 548

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

Bench : Division Bench

Advocate : D.C.S. Rawat, for the Appellant; V.K. Kohli and I.P. Kohli, for the Respondent

Judgement

J.C.S. Rawat, J.—This appeal u/s 173 of the Motor Vehicles Act, has been filed against the award dated 18-08-2006 passed by the Motor Accidents Claims Tribunal/Fast Track Court 5th, Dehradun (hereinafter referred as "Tribunal"), Dehradun in M.A.C.P. No. 180/2005, whereby the learned Tribunal had awarded a sum of Rs. 9,64,388/- as compensation alongwith interest @ 6% per annum to the claimants against the Uttaranchal State Road Transport Corporation-Appellant.

2. Brief facts of the case are that the claimants-Respondent Nos. 1 to 3 had filed a claim petition before the Tribunal, alleging therein that on 29-10-2004 at about 5 p.m. Dalip Kumar Gurung (deceased) was going on his motorcycle bearing No. UA07D-3694 from Dehradun city to his village Sewla Khurd, Nayagaon, P.O. Mohebewala. When he reached near Majra, Main Dehradun, a Corporation Bus bearing No. UA07H-8970 coming from the side of Saharanpur being driven by its driver-Rajveer Singh rashly and negligently hit the motorcycle, due to which the deceased sustained grievous injuries on his person. The injured was taken to Mahant Indresh Hospital where he remained hospitalized for five days and ultimately the deceased died on 02-11-2004 in the hospital. It was further

alleged that the deceased was aged about 28 years at the time of accident and he was working as Liansnaik in Indian Army and was earning a sum Rs. 10,000/- per month as salary. Thus, the claim petition was filed by the dependants of the deceased for the compensation in lieu of his death.

3. The opposite parties filed a joint written statement and contested the case. According to the written statement of the driver of the Bus, after dropping the passengers the bus was going to the workshop. When the bus reached near I.T.I., the motorcyclist coming from the opposite direction while negotiating a cyclist who was having some "Razais"(quilts) on his cycle lost his control over the motorcycle and hit the bus, due to which the motorcyclist sustained multiple injuries on his person. It was further alleged in the written statement that the driver of the Bus was not responsible for the accident. It was further alleged that the claim petition is liable to be dismissed on the ground that the claimants have not impleaded the insurer of the motorcycle in the claim petition.

4. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had come to the conclusion that the accident took place due to rash and negligent driving of the Corporation Bus due to which the deceased sustained multiple injuries on his person and died later on. The learned Tribunal had assessed the age of the deceased as 28 years at the time of accident. The income of the deceased was assessed at Rs. 6527/- per month or say Rs. 78,324/- per annum. The learned Tribunal, after deducting 1/3rd income for personal expenses had fixed the dependency of the deceased as Rs. 52,216/- per annum. The learned Tribunal had applied the multiplier of "18", the amount comes Rs. 9,39,888/-. Apart from this, Rs. 15,000/- towards the medical expenditure, Rs. 2000/- for funeral expenses, Rs. 5000/- for the loss of consortium and Rs. 2500/- for the loss of estate were awarded to the claimants. Thus, the Tribunal had awarded a sum of Rs. 9,64,388/- as compensation alongwith interest @ 6% per annum in favour of the claimants against the Appellant-Uttaranchal State Road Transport Corporation.

5. Feeling aggrieved by this, the Uttaranchal State Road Transport Corporation-Appellant has preferred the present appeal.

6. Mr. D.C.S. Rawat, the learned Counsel for the Appellant contended that the learned Tribunal erred in holding that the driver of the Appellant-Corporation was rash and negligent at the time of the accident; the Tribunal erred in not believing the evidence of the Appellant-Corporation to the effect that the bus was stationed to its side and the motorcyclist the deceased while negotiating a cyclist who was having some "Razais" (quilts) on his cycle lost his control over the motorcycle and he himself dashed his motorcycle to the stationed bus; the Tribunal erred in awarding the exorbitant compensation of Rs. 9,64,388/- to the claimants; in selecting higher multiplier of "18"; and in assessing higher income of the deceased at Rs. 6,527/-per month by the Tribunal.

7. Mr. V.K. Kohli, the Senior Advocate for the Respondents-claimants supported

the judgment of the learned Tribunal.

8. In support of its case, the claimants had adduced the evidence of Smt. Nikita Gurung (wife of the deceased) as PW1, who is not the eyewitness of the motor accident. The claimants had adduced the evidence of Ravi as PW2 who has claimed himself to be present at the time of the accident. Ravi PW2 has stated in his evidence that on 29-10-2004, he was also going on his motorcycle to Subhash Road, Claimantown. When he reached near I.T.I., the offending bus of the Appellant-Corporation came from the side of Saharanpur road being driven by its driver rashly and negligently and hit the deceased who was going on his motorcycle on the left side. He further stated that the bus came to the wrong side and hit the motorcyclist i.e. the deceased. The deceased sustained multiple injuries on his person and later on he succumbed to his injuries. As against this, the Appellant-Corporation has adduced the evidence of the driver-Rajveer Singh OPW1, who has stated that when he stationed the bus on its left side, the deceased motorcyclist coming from the opposite direction while negotiating a cyclist who was carrying some "Razais" (quilts) on his cycle lost his control over his motorcycle and dashed his motorcycle to the stationed bus due to which he sustained multiple injuries. The Appellant-Corporation has also adduced the evidence of Paramjit Singh as OPW2 who was the conductor in the said bus. Paramjit Singh OPW2 has stated in his evidence that the bus was standing on the left side of the road and he came to know that a motorcycle hit the bus and thus the deceased motorcyclist sustained multiple injuries and he was taken to hospital. He has, further, stated that the said accident occurred due to rash and negligent driving of the motorcyclist. Perusal of the entire evidence reveals that the driver and the conductor of the bus have categorically stated in their evidence that they had also lodged a report of the accident with the police but that report was not produced before the Court. The said report must have been produced before the Court so that the immediate conduct of the driver and the conductor of the vehicle would have supported the evidence of the Appellant-Corporation. By not producing the said report leads to take an inference that the incident did not occur as alleged by the Appellant-Corporation. The claimants have also filed the site plan showing how the accident occurred at the spot. It is evident from the perusal of the site plan that the bus had gone to its extreme right and it hit the motorcyclist who was going on its extreme left. It is also on record that a case u/s 304-A I.P.C. had been registered against the driver of the offending bus. The claimants have also adduced the evidence of Ravi PW2 who had seen the incident and his evidence is further supported by the conduct of OPW1 Rajveer Singh-the driver and OPW2 Paramjit Singh-the conductor who had stated in their evidence that they had lodged a report of the said accident to the police but the same was not produced before the Court. The evidence of Ravi PW2 is further corroborated by the site plan. The postmortem report further corroborates the evidence of Ravi PW2 that the injuries sustained by the deceased had been on right side of his nose, hand, ear, knee, etc. It is also evident from the evidence of Rajveer Singh OPW1 and Paramjit Singh OPW2 that

the offending bus was damaged towards its right side. If the offending bus had gone on the right side as said by the claimants, in such an accident, the injuries on the person of the deceased would have definitely come on the right side and the offending vehicle would also be damaged on its right side. If the story of Rajveer Singh OPW1 and Paramjit Singh OPW2 is taken into consideration, the deceased should not have sustained injuries on his right side of his body and the bus would have been damaged towards its left side. In view of the above, we do not find any fault in the approach of the learned Tribunal in holding that the driver of the offending vehicle was rash and negligent at the time of accident.

9. Now, we shall examine as to whether the compensation of Rs. 9,64,388/- as awarded by the Tribunal to the claimants is just and proper compensation in the facts and circumstances of the case. In the motor accident claim cases what is important is that the compensation to be awarded by the Tribunal should be just and proper compensation in the facts and circumstances of the case. The claimants had filed the pay slip of the deceased {marked as 38B(1) and (2)} in which his basic salary has been shown as Rs. 3740/- per month. After adding the other allowances, the income of the deceased has been shown as Rs. 6527/- per month and Rs. 78,324/- per annum. Therefore, we do not find any fault in the approach of the learned Tribunal in assessing the income of the deceased at Rs. 6527/- per month and Rs. 78,324/- per annum. We, therefore, hold that the Tribunal was justified in assessing the income of the deceased at Rs. 6527/- per month.

10. By deducting one-third of Rs. 78,324/- as personal expenses of the deceased, the claimants annual dependency is assessed at Rs. 52,216/- per annum.

11. The deceased was about 28 years of age on the date of the accident. The claimants are his widow; one minor daughter Km. Muskan and one minor son Devank Gurung. His widow Smt. Nikita Gurung is shown aged about 30 years; whereas their minor children were aged about 4 and 6 years respectively. In the case of New India Assurance Company Limited v. Smt. Kalpana and Ors. 2007 (1) I.A.C. 290 (SC), the Hon''ble Apex Court has observed as follows:

12. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, appears to be appropriate. In fact in Trilok Chandra (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts earning independently and the lowest would be

in respect of a person in the age group of 60 to 70, as the former is the normal retirement age. See *New India Assurance Company Ltd. v. Charlie and Anr.* 2005 (2) IAC 620 (SC).

13. 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 month 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.

12. The Hon"ble Apex Court in the above quoted dictum held that the multiplier of "13" would be appropriate considering the age of the deceased as 33 years on the date of accident. In view of the facts and circumstances of the case, we are of the opinion that the multiplier of "15" would be appropriate in the instant case instead of "18".

13. By multiplying the annual dependency of Rs. 52,216 with the multiplier of "15", the compensation works out to Rs. 7,83,240/-. The Tribunal has awarded Rs. 15,000/-towards the medical expenditure, Rs. 2000/- for funeral expenses, Rs. 5000/- for the loss of consortium and Rs. 2500/- for the loss of estate. Thus, the claimants become entitled to receive a total sum of Rs. 8,07,740/- (Rupees Eight Lakhs Seven Thousand Seven Hundred Forty only) as compensation for the death of Dalip Kumar Gurung in the motor accident.

14. In view of the forgoing discussion, the appeal filed by the Appellant is liable to be partly allowed and is hereby partly allowed to the above extent. The claimants are entitled to get a sum of Rs. 8,07,740/- (Rupees Eight Lakhs Seven Thousand Seven Hundred Forty only) as compensation instead of Rs. 9,64,388/- as awarded by the Tribunal in lieu of the death of the deceased. The claimants would also get interest thereon @ 6% per annum as awarded by the Tribunal from the date of filing of claim petition till the date of payment. The impugned award passed by the learned Tribunal is modified to the above extent.

15. No orders as to costs.