
(2009) 04 UK CK 0015

In the Uttarakhand High Court

Case No : Appeal From Order No. 513 of 2006

Uttaranchal Transport Corporation

APPELLANT

Vs

Shoorbir Singh Panwar

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 2 UC 1256

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Rajendra Dobhal, for the Appellant; J.P. Joshi, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, 1988, has been preferred by Uttaranchal Transport Corporation against the judgment and award dated 20-06-2006 passed by Motor Accident Claims Tribunal/District Judge, Tehri Garhwal, in M.A.C.C. No. 42 of 2005, Shoorbir Singh Panwar v. Regional Manager Uttaranchal State Road Transport Corporation.

2. Brief facts of the case are that on 27-12-2003 at 11.00 a.m. when claimant-Shoorbir Singh Panwar was going to Dehradun from Rishikesh in his Honda City Car No. U.P.07C/7744, driver of Bus No. U.P.07/G-4281 came by driving the bus rashly and negligently and dashed the car of the claimant, due to which car of the claimant was badly damaged and claimant sustained grievous injuries. The claimant was taken to clinic of Dr. U.P. Gupta, Rishikesh, where he was referred to Sama Nursing Home, Delhi, where he remained admitted and thereafter he was referred to Sir Ganga Ram Hospital, where he remained admitted for a long time and he spent a huge amount on his medical treatment. The claimant has become disabled on account of injuries sustained by him in the accident. The claimant claimed a sum of Rs. 12,00,000/- as compensation against the opposite party.

3. Opposite party-UASRTC contested the claim by filing written statement

admitting therein that said Bus was going at Haldwani Road from Dehradun on 27-12-2003, on which Dharmendra Singh was employed as driver on contract basis. As per statements of driver and conductor, a Maruti Car No. U.A.07/6652 which was coming ahead of the Bus, lost its control and it collided with the bus. None of the passengers sitting in car sustained injuries. The claim petition has been filed on wrong and baseless grounds and it deserves to be dismissed.

4. The learned Tribunal on the basis of pleadings of the parties framed following issues in the claim petition:

1. Whether the accident took place on 27-12-2003 at about 11.00 a.m. near I.I.P., Harrawala on Dehradun-Rishikesh Motor Road, District Dehradun due to the rash and negligent driving of the UPSRTC Bus No. U.P07/G-4281 by its driver resulting injuries to the Petitioner Shoorbir Singh Panwar as alleged in the petition?

2. Whether the Petitioner is not entitled to any compensation on the ground alleged in para No. 14 of the WS of the opposite party?

3. To what amount of compensation, if any, is the Petitioner entitled?

5. Parties led oral as well as documentary evidence in support of their cases. The learned Tribunal after having considered the entire material evidence available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 10,00,000/- along with interest of 5% per annum from the date of filing the petition till the date of actual payment, vide judgment and award dated 20-06-2006.

6. Feeling aggrieved by the aforesaid impugned judgment and award, the Appellant-Uttaranchal State Road Transport Corporation has preferred the present appeal before this Court.

7. Heard Sri Rajendra Dobhal, learned Counsel for the Appellant, Sri J.P. Joshi, learned Counsel for claimant-Respondent and perused the record.

8. As far as factum of accident is concerned, the Tribunal has discussed this point while deciding issue No. 1 in the impugned judgment and award. The record reveals that claimant-Shoorbir Singh Panwar himself has been produced as PW1. This witness has stated in his deposition that on 27-12-2003 when he was going to Dehradun from Rishikesh in his Honda City car, Roadways Bus No. U.P.07G/4281 being driven rashly and negligently dashed his car, due to which claimant sustained grievous injuries. Opposite party filed its written statement before the Tribunal, in which it has admitted the factum of accident but stated that accident occurred due to collision with car of claimant in order to save another vehicle, which itself shows the rash and negligence on the part of driver of roadways bus. This witness further stated that bus in question was being plied by its driver rashly and negligently and in the accident his car was badly damaged and he also sustained injuries. This fact has not been controverted by the opposite party by producing the driver of roadways bus. The Tribunal after

having considered the entire evidence adduced before it came to the conclusion that accident occurred on account of rash and negligent driving of driver of Bus No. U.P. 07G/4281, due to which claimant sustained injuries and his car was also damaged. The finding recorded by the Tribunal in this respect does not require any interference and same deserves to be confirmed.

9. As far as amount of compensation to be paid to the claimant is concerned, the Tribunal while deciding issue Nos. 2 and 3 has discussed this aspect, but the conclusion drawn by the Tribunal with regard to amount of compensation to be paid to the claimant, appears to be on the basis of conjectures and surmises. It is true that the claimant is an Advocate and he has filed the income tax return in order to establish his income. It is also true that the claimant suffered injuries in the accident and he remained admitted in Gupta X-ray and Trauma Centre, Rishiesh, Sama Nursing Home, Delhi and Sir Ganga Ram Hospital, New Delhi for several days. The claimant has also filed papers pertaining to the medical bills and other expenses incurred on his medical treatment in several hospitals. The claimant has also filed the disability certificate showing therein that he has suffered 40% disability on account of this accident.

10. Now, it is to be seen as to how much monetary loss the claimant has suffered on account of the accident in which he sustained injuries. The income tax return filed by the claimant for the assessment year 2001-02 indicates that he had gross income in that assessment year amounting to Rs. 2,30,000/-, likewise in the assessment year 2002-03 claimant had gross income of Rs. 2,02,400/-, in the assessment year 2003-04 claimant had gross income of Rs. 2,62,478.26 and further in the assessment year 2004-05 claimant had gross income of Rs. 3,35,276/-. The accident in this case had taken place on 27-12-2003. The income tax assessment filed by the claimant clearly indicates that in the assessment year 2001-02 he had an income of Rs. 1,46,888/- from "business or profession", while he had an income of Rs. 44,787/- from other sources as well as he had an income of Rs. 38,335/- from house property. The income in the assessment year 2002-03 from house property is Rs. 26,600/- and from "business or profession" is Rs. 1,19,874/- as well as from other sources is Rs. 55,926/-. Further, in the assessment year 2003-04, the income of claimant from house property is Rs. 26,600/- and from "business or profession" it is Rs. 1,60,756/- and from other sources is Rs. 74,122.26. Further, in the assessment year 2004-05 the income of the claimant from house property is Rs. 26,600/- as well as from other sources it is Rs. 3,28,100/- and income from "business or profession" is Rs. 41,811/-. It is therefore quite clear that claimant has not suffered any monetary loss with regard to income from house property as well as income from other sources. It appears that in the assessment year 2004-05 the income from business or profession is only Rs. 41,811/-, while it was on higher side in the previous assessment years i.e. 2001-02, 2002-03 and 2003-04. In the preceding year 2003-04 the income of the claimant from business or profession was Rs. 1,60,756/-, while in the assessment year 2004-05 it was only Rs. 41,811/-. The income of the claimant in the assessment year 2002-03 from

business or profession was Rs. 1,19,874/-. Therefore, all these documents clearly indicate that there is variation in the income of claimant from business or profession in every year. However, in case, if the aggregate of the income from business or profession is taken into account, then keeping in view the income of claimant from business or profession in assessment year 2004-05 which is only Rs. 41,811/-, the monetary loss which the claimant has suffered, appears to be Rs. 80,000/- per annum. The conclusion drawn by the Tribunal that income of the claimant is more than Rs. 3,00,000/- per annum and he has suffered the monetary loss on that income, appears to be wrong. It is quite apparent from the documents filed by the claimant that he has not suffered any loss with regard to income either from house property or from other sources, rather the income from other sources has considerably increased in the year 2004-05 (which is Rs. 3,28,100/- in comparison to previous years). The only loss which the claimant has suffered is the income from business or profession and on the basis of calculation made by me in earlier paragraphs, it appears that the claimant had suffered a loss of Rs. 80,000/- per annum as far as income from business or profession is concerned.

11. The age of the claimant at the time of accident was 68 years and keeping in view the age of the claimant a multiplier of "5" to be adopted in this case would be just and appropriate and after adopting multiplier of "5" the amount of loss suffered by the claimant comes to Rs. 80,000 ? 5 = Rs. 4,00,000/-. The claimant has suffered disability up to an extent of 40% as per the disability certificate filed by the claimant. Although the claimant has not adduced any evidence in order to establish his disability by producing any doctor or adducing any other cogent and reliable evidence, even then if it is considered that disability certificate has been issued by the authority who is a public servant and genuineness of this document is not to be doubted and disability of claimant upto an extent of 40% is taken into account, then total monetary loss suffered by claimant comes to Rs. 4,00,000 ? 40% = Rs. 1,60,000/-.

12. Now, it is also to be seen that how much amount the claimant has invested in his medical treatment on account of injuries sustained by him in this accident. Although the claimant has filed the medical bills and other papers pertaining to medical treatment which are indicative of this aspect that he has in fact invested more than Rs. 3,00,000/- in his medical treatment, but it cannot be conclusively said that this entire amount was invested by the claimant on his medical treatment pertaining to injuries sustained by him in the accident. The claimant has invested a maximum sum of rupees on his heart ailment and operations pertaining to his heart in Sir Ganga Ram Hospital, New Delhi. It is true that claimant has paid a sum of Rs. 31,350/- as room rent as well as other handsome amount on different heads in the hospital, but the bills produced by the claimant before the Tribunal clearly reveal that the claimant had been suffering from heart ailment and he had to undergo the heart operation in hospital at Delhi. The claimant had to invest a handsome amount on his treatment pertaining to heart ailment, while, in this accident, it is an admitted fact that claimant suffered a

fracture in his left elbow joint and on account of this accident as per the opinion of the doctor he suffered a disability upto an extent of 40%. The perusal of the bills is revealing this aspect that the claimant had to invest maximum a sum of Rs. 9,646/- (expenses towards orthopedic treatment) + Rs. 6,000/- (theatre charge) + Rs. 15,000/- (operation charge) + Rs. 5,850/- (doctors' visit fee) + Rs. 160/- (dressing charge) + Rs. 150/- (blood) + Rs. 1500/- (Anesthesia) = Rs. 38,306/- on his medical treatment pertaining to injuries sustained by him in the accident. Apart from the aforesaid amount which the claimant has invested on his medical treatment, the claimant must have also invested at least a sum of Rs. 25,000/- for purchase of medicines and hospital pharmacy. I, therefore, am of the view that the claimant is entitled to get a sum of Rs. 25,000/- towards purchase of medicines and hospital pharmacy. The bills filed by the claimant which have been taken into account by the Tribunal are also indicating towards this aspect that claimant had also to undergo operation of heart and he had to invest really a handsome amount on the treatment pertaining to his heart ailment. The bills are also indicating that claimant had to be admitted in Sir Ganga Ram Hospital, New Delhi and he had to undergo the heart operation over there. The claimant has thus invested maximum sum of rupees on his heart ailment. The claimant has made a futile attempt before the Tribunal to get an exorbitant amount of compensation in this case by taking the pretext that he had invested a sum of more than Rs. 3,00,000/- on his treatment with regard to injuries sustained by him in this accident. As I have already observed in the previous paragraphs that claimant has not adduced any cogent and reliable evidence in order to show that claimant had to go under the treatment of his heart ailment on account of elbow injury sustained by him in the accident. The claimant has also not produced any doctor in order to establish that the heart ailment was a result of elbow injury sustained by him in the accident. Therefore, the papers filed by the claimant are not at all suggesting this aspect that the claimant had suffered the heart ailment on account of elbow injury sustained by him in the accident. It is thus quite clear that claimant has made a futile attempt to get an exorbitant amount of compensation by taking the plea that he had invested more than Rs. 3,00,000/- on his treatment, while the papers are suggesting otherwise. I do not have any doubt in my mind that the claimant has invested not more than 38,306/- + Rs. 25,000/- = Rs. 63,306/- for his medical treatment with regard to injuries sustained by him in the accident.

13. On the basis of calculation made by me in the aforesaid paragraphs, I come to the conclusion that claimant is entitled for a sum of Rs. 1,60,000/- + Rs. 63,306/- = Rs. 2,23,306/- (instead of compensation of Rs. 10,00,000/- as has been awarded by the Tribunal vide judgment and award dated 20-06-2006).

14. As far as rate of interest awarded by the Tribunal is concerned, that appears to be on lesser side. The Tribunal has awarded only 5% interest on the amount of compensation. But, keeping in view the present rate of interest being given by the Banks, the amount of interest should be 7% per annum.

15. For the reasons stated above, I am of the view that claimant is entitled for a sum of Rs. 2,23,306/- as compensation along with interest of 7% per annum from the date of filing the petition till the date of actual payment (instead of Rs. 10,00,000/- as compensation, along with interest of 5% per annum, as has been awarded by the Tribunal vide impugned judgment and award).

16. In view of the above, appeal is liable to be partly allowed.

17. Accordingly, appeal is partly allowed. The impugned judgment and award is modified to the extent that claimant is entitled for a sum of Rs. 2,23,306/- (Rupees two lacs twenty three thousand three hundred and six only) as compensation along with interest of 7% per annum from the date of filing the petition till the date of actual payment (instead of Rs. 10,00,000/- as compensation, along with interest of 5% per annum, as has been awarded by the Tribunal vide impugned judgment and award).

18. The statutory amount deposited by the Appellant with this Court be remitted to the Tribunal concerned.