

Radha Devi and ors. Vs. Narayan Singh and ors.

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Court : Uttaranchal

Decided On : Mar-24-2005

Reported in : 2005(2)AWC1369(UHC)

Judge : Rajesh Tandon and; J.C.S. Rawat, JJ.

Acts : [Motor Vehicles Act, 1988](#)

Appeal No. : A.O. No. 459 of 2004

Appellant : Radha Devi and ors.

Respondent : Narayan Singh and ors.

Advocate for Def. : R.B. Agarwal, Adv.

Advocate for Pet/Ap. : Dinesh Gahtori, Adv.

Disposition : Appeal allowed

Judgement :

Rajesh Tandon, J.

1. This is an appeal against the judgment and award dated 3.9.2004, passed by the Motor Accident Claims Tribunal, Champawat.

2. Brief facts giving rise to the present appeal are that appellants filed a claim petition before the Motor Accident Claims Tribunal, Champawat, for grant of compensation on account of the death of Kalyan Ram in a motor vehicle accident on 8.11.2002, near village Gallagaon on Barakot-Lohaghat motor road. The appellants-petitioners submitted that Kalyan Ram boarded vehicle No. UA 03-1106 at Barakot for going to Lohaghat. The vehicle was being driven rashly and negligently due to which it met with accident near Gallagaon. Kalyan Ram sustained fatal injuries in the accident and he succumbed at the spot. The deceased was a mason and was earning Rs. 4,000 as wages.

3. The claim petition was contested by the respondents. The respondents have filed their respective written statements. Respondent No. 1 denied that the accident was caused due to rash and negligent driving by the driver of the vehicle. Respondent No. 2 submitted that the driver and owner of the vehicle flouted the terms and conditions of the insurance policy and as such the insurance company is not liable to pay compensation to the claimants.

4. On the pleadings of the parties, as many as five issues were framed by the Claims Tribunal. Issue No. 1 was with regard to the rash and negligent driving by the driver of the vehicle and it was held that the accident had taken place due to rash and negligent driving by the driver of the jeep. Issue No. 2 was framed regarding valid driving licence and issue No. 3 was framed regarding valid insurance of the jeep that met with accident and both these issues were answered in affirmative and it was held that the driver of the jeep had valid driving licence and the jeep was insured with the respondent No. 2. Issue No. 4 was framed regarding the amount of compensation and issue No. 5 was with regard to violation of terms and conditions of the insurance policy. The Claims Tribunal has held that terms and conditions of the insurance policy were not flouted. For calculating the amount of compensation the Claims Tribunal had taken notional income of the deceased as Rs. 15,000 per annum and after deducting 1/3 of the same a sum of Rs. 12,000 was taken for calculating the amount of compensation. The age of the deceased was 50 years at the time of accident and thus by applying a multiplier of 11 a compensation of Rs. 1,10,000 has been granted. Besides this the Claims Tribunal also awarded a sum of Rs. 2,000 granted for

funeral expenses and Rs. 5,000 for loss of love and affection and loss of consortium. Thus, the Claims Tribunal awarded a total sum of Rs. 1,17,000 as compensation to the claimants. Feeling aggrieved the present appeal has been filed by the claimants.

5. We have heard the learned counsel for the parties and have perused the record.

6. The present appeal has been filed for enhancement of the amount of award. The learned counsel for the appellant has submitted that the Claims Tribunal was not justified in deducting one third of the amount from the notional income for calculating the amount of pecuniary loss.

7. There is no documentary evidence to prove the income of the deceased, therefore, the Claims Tribunal was justified by taking Rs. 15,000 as notional income of the deceased. No further amount is liable to be deducted if the income of the deceased is taken as notional amount of Rs. 15,000, as held in the recent judgment of the Apex Court in the case of Manju Devi and Anr. v. Musafir Paswan and Anr., 2005 ACJ 99, as under:

'As set out in the Second Schedule to the [Motor Vehicles Act, 1988](#), for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000 must be taken as the income. Thus, the compensation comes to Rs. 2,15,000.'

8. The multiplier taken by the Claims Tribunal appears quite just and proper and thus multiplying the notional income by 11 the total compensation comes to Rs. 1,65,000. Besides this the Claimants are also entitled to get Rs. 2,000, for funeral expenses and Rs. 5,000 for loss of love and affection and loss of consortium. Thus, the petitioners are entitled to get a sum of Rs. 1,72,000 as compensation.

9. In the result, this appeal is allowed by modifying the order impugned holding the appellants entitled to a compensation of Rs. 1,72,000 with pendente lite and future interest @ 6% per annum. Out of the total amount of compensation half of the amount be paid to petitioner No. 1 widow of the deceased in cash, while half of the

amount shall be equally distributed amongst the rest of the petitioners. The amount of the share of minors shall be deposited in individual fixed deposit accounts in the names of minors, in some nationalised bank till the period each of them attains the age of majority. No order as to costs.

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