Kalawati Devi and ors. Vs. Narayan Singh and ors.

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Court : Uttaranchal

Decided On : Mar-24-2005

Reported in : 2006ACJ2813; 2005(2)AWC1373(UHC)

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

Acts : Motor Vehicles Act, 1988; Constitution of India - Article 21

Appeal No. : A.O. No. 462 of 2004

Appellant : Kalawati 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 Khim Ram in a motor vehicle accident on 8.11.2002 near village Gallagaon on Barakot-Lohaghat motor road. The appellants petitioners submitted that Khim 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, Khim Ram sustained fatal injuries in the accident and he succumbed at the spot. The deceased was employed in P.W.D. Lohaghat as Gangman and was getting Rs. 5,000 per month as salary.

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 the basic pay of the deceased and after multiplying the annual loss with 16 awarded a sum of Rs. 3,87,840 as compensation. Further an amount of Rs. 2,000 was granted for funeral expenses and Rs. 5,000 were granted for loss of love and affection and loss of consortium. Thus, the Claims Tribunal awarded a total sum of Rs. 3,94,840 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 taking the amount of basic pay only for calculating the pecuniary loss, while other allowances ought to have been taken for calculating the amount of pecuniary loss.

7. In the accident the claimants had lost the life of the only bread earner of the family, therefore, the amount which the deceased was getting during his lifetime to earn the livelihood of his family must be taken for calculating the amount of compensation. The Claims Tribunal was not justified to deduct the amount of dearness allowance from the monthly salary of the deceased.

8. The Apex Court in the case, Kapila Hingorani v. State of Bihar, 2003 (7) AIC 18 (SC), observed as under:

'The term 'life' in India has a wide and far-reaching concept. It includes livelihood and so many other facets thereof. 'Life', as observed by Field, J. in Munn v. Illinois, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. (See Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Olga Tellis v. Bombay Municipal Corporation, (1983) 1 SCC 124).'

9. In the case of Management of Shri Chaltan Vibagh Khand Udyog Sahakari Mandi v. G.S. Barat, AIR 1980 SC 31, clarified the object and purpose of grant of dearness allowance. It has been held as under:

'The purpose of grant of dearness allowance is to neutralise the increase in the cost of living due to rise in prices. Neutralisation may be such as to neutralise fully the increase in the cost of living or may be restricted to neutralise only a portion of the increase. Full or cent per cent neutralisation can be achieved if the increase in the cost of living is not fully compensated so that the pay of the worker is not adversely affected. But an award of more than 100% of an increase in the cost of living would be more than neutralisation and would, if effect, give the worker an increased wage.'

10. Apart from that dearness allowance being part of the salary we are of the opinion that it cannot be deducted from the salary. It is well established that the Motor Vehicles Act is a purposive legislation, the intention being to compensate the loss on account of the death of the bread earner, any deduction made in the dearness allowance against the constitutional obligation contained under Article 21 of the Constitution of India.

11. In State of Haryana v. Jasbir Kaur, 2003 (11) AIC 597 (SC), reliance has been placed on the judgment of Halen C. Rebello v. Maharashtra State Road Transport Corporation, AIR 1998 SC 3191, regarding 'just compensation'. The observations of the Hon'ble Supreme Court are as under:

'Though by use of the expression 'which appears to it to be just' a wide discretion is vested on the Tribunal the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'Just' denotes equitability. fairness and reasonableness and non-arbitrary. If it is not so it cannot be just.'

12. The claimants have filed paper No. 21C, salary certificate issued by the Executive Engineer, Construction Division P.W.D. Lohaghat. In that certificate the date of birth of the deceased has been mentioned as 14.6.1969, meaning thereby that at the time of accident deceased Khim Ram was 33 years old. The details of salary has been given in the certificate as under:

Pay 3,030.00D.A. 1,576.00House Rent 125.00Border Allowance 225.00

13. After excluding house rent and boarder allowance from his pay the net amount comes to Rs. 4,606 and this amount can be taken for calculating the pecuniary loss after deducting one-third of the same for own expenses of the deceased, if he would have been alive. Thus, the annual pecuniary loss sustained by the claimants comes to 4,606--(4.606 1/3) x 12 = 36.852. Considering the age of the

deceased a multiplier of 17 should have been taken and thus the compensation comes to Rs. 36,852 x 17 = 6,26,484. Besides this amount 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. 6,33,484 as compensation, which we round up to Rs. 6,34,000.

14. In the result, we modify the award holding the appellants entitled to a compensation of Rs. 6,34,000 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.

15. Accordingly the appeal is allowed. No order as to costs.