

Haruli Devi and anr. Vs. Mahesh Chandra Joshi and anr.

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SooperKanoon Citation : sooperkanoon.com/514213

Court : Uttaranchal

Decided On : Jun-21-2005

Reported in : III(2005)ACC428; 2006ACJ302

Judge : M.M. Ghildiyal and; Prafulla C. Pant, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 173

Appeal No. : A.O. No. 156 of 2005

Appellant : Haruli Devi and anr.

Respondent : Mahesh Chandra Joshi and anr.

Advocate for Def. : D.S. Patni, Adv.

Advocate for Pet/Ap. : G.B. Pandey, Adv.

Disposition : Appeal allowed

Judgement :

Prafulla C. Pant, J.

1. This appeal preferred under section 173 of [Motor Vehicles Act, 1988](#) is directed against the judgment and order dated 7.3.2003 passed by learned Presiding Officer of the Motor Accidents Claims Tribunal/District Judge, Pithora-garh, whereby an amount of Rs. 1,00,000 was awarded as compensation in favour of

the claimants-appellants. This appeal is for enhancement of the said amount.

2. Brief facts of the case are that on 14.12.1998 at about 8 a.m., vehicle bus registration No. UP 01-2111 of K.M.O.U. Ltd. owned by the respondent No. 1, was being driven rashly and negligently by its driver. In the said bus Faqeer Singh was travelling. Due to rashness and negligence on the part of the driver, the bus fell into khud at Dooni within the limits of Police Station, Berinag. Faqeer Singh died in the accident. Claimants are his parents. The deceased was a graduate and unemployed youth. It is alleged that the claimants were dependent on their son, who was earning his income from agricultural work.

3. The respondent No. 1 contested the claim petition denying the factum relating to rashness and negligence on the part of the driver. It was further pleaded by respondent No. 1 that the vehicle in question was insured with respondent No. 2 at the time of the accident.

4. Respondent No. 2 also contested the claim petition on the ground that the vehicle was not plying with the valid papers at the time of the accident; the conditions mentioned in the policy were violated, but it was not denied that the vehicle was insured with it.

5. Learned Tribunal framed necessary issues and after recording evidence and hearing the parties, came to the conclusion that the bus was owned by respondent No. 1 and it was insured with respondent No. 2. Bus was driven rashly and negligently by its driver at the time of the accident in which Faqeer Singh died.

6. The learned Claims Tribunal has awarded Rs. 1,00,000 as compensation to the claimants. The claimants, aggrieved by the quantum of the compensation, have preferred this appeal before this court.

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

8. The factum relating to rashness and negligence on the part of the driver of the vehicle No. UP 01-2111 or its ownership or its being insured with respondent No. 2 are not under challenge in this appeal. The only question for determination is that whether the amount of compensation is appropriate or not.

9. Admittedly, the deceased was an unemployed youth, aged about 27 years. It is also established on the record that the deceased was earning income by doing agricultural work. Sher Singh, PW 1, father of the deceased, has stated on oath that the deceased was earning Rs. 3,500 per month by doing agricultural work and tuition. The statement of PW 1 remains uncontroverted as no evidence has been adduced from the side of respondents in regard as to income of the deceased. That being so, the learned Tribunal has erred in law by not believing the evidence of PW 1 in this regard. Since the deceased was earning Rs. 3,500 per month, his annual income comes out to be Rs. 42,000. One-third of the income earned by the deceased would have been spent on himself. Therefore, net loss to the parents comes out to be Rs. 28,000 per annum. In view of the age of the parents who are 52 (mother) and 57 (father) years old (average 55 years), in the facts and circumstances of the case, a multiplier of 5 is just and appropriate. That being so, the pecuniary loss to appellants-claimants, due to the dependency upon their son, comes out to be Rs. 1,40,000. The claimants also deserve to be compensated for the mental shock and agony they have suffered on account of the death of their son and the expenses they have incurred towards the funeral of the deceased. In view of the statement made by Sher Singh, PW 1, on this point, Rs. 10,000 is required to be added on this account, to the loss suffered by them on account of dependency.

10. As such, the total amount of compensation payable to claimants-appellants comes out to be Rs. 1,50,000. Accordingly, the appeal deserves to be allowed and the award of the learned Tribunal is required to be modified.

11. The appeal is accordingly allowed and the amount of compensation is enhanced to Rs. 1,50,000 (rupees one lakh fifty thousand only) which shall be paid by United India Insurance Co. Ltd., respondent No. 2, along with 6 per cent interest per annum on the unpaid sum, i.e., Rs. 50,000 from the date of claim petition till the date of its realisation, as the rest of the amount has already been paid. If the enhanced sum is not paid within 45 days from today, the interest payable on the enhanced sum, i.e., Rs. 50,000 shall be 9 per cent per annum.