

Vikram Singh and ors. Vs. Manvendra Singh and ors.

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Court : Uttaranchal

Decided On : Apr-19-2006

Reported in : II(2006)ACC461; 2007ACJ950

Judge : Rajeev Gupta, C.J. and; Prafulla C. Pant, J.

Appellant : Vikram Singh and ors.

Respondent : Manvendra Singh and ors.

Disposition : Appeal allowed

Judgement :

Prafulla C. Pant, J.

1. This appeal preferred under Section 173 of Motor Vehicles Act, 1988, by claimants, is directed against the judgment and award dated 8.9.2000 in Motor Accident Claim Case No. 41 of 1999, passed by the learned M.A.C.T./District Judge, Chamoli, whereby a sum of Rs. 59,500 has been awarded as amount of compensation to the claimants.

2. Brief facts of the case are that on 5.7.1999, Nandan Singh (deceased) was travelling in the jeep bearing registration No. UP 07-J 0833 on his way from Pauri Garhwal to Chamoli. It is alleged in the claim petition, that due to rash and negligent driving on the part of the driver of the jeep, at about 2 p.m., an accident

took place in which Nandan Singh died. At the time of his death Nandan Singh was working as peon in the office of District Audit Officer, Co-operative Societies, Chamoli and his salary was Rs. 4,480 per month. Claimants-appellants Parwati Devi is the widow of the deceased and the claimants Vikram Singh and Laxmi are his children. After the death of Nandan Singh, aforesaid claimants filed a claim petition before the Motor Accidents Claims Tribunal, Chamoli, claiming Rs. 10,00,000 as amount of compensation.

3. The driver of the vehicle in question, Harish Singh, while contesting the claim petition has admitted the accident but pleaded that he was neither rash nor negligent in driving the vehicle. It is alleged by him that on a bend of the hilly road, a cow suddenly came in front of the vehicle, which caused the accident. The owner of the vehicle in question, Manvendra Singh, respondent, in his written statement also pleaded that the driver was not at fault. It is further pleaded by the owner that the vehicle was insured at the time of the accident with Oriental Insurance Co. Ltd. Oriental Insurance Co. Ltd. contested the claim and pleaded that the deceased was not a valid passenger nor the vehicle was being plied, at the time of the accident, with proper documents.

4. The Motor Accidents Claims Tribunal framed following issues in the matter:

(1) Whether Nandan Singh died in an accident on 5.7.1999 on Pauri-Sri Nagar Road while travelling in vehicle registration No. UP 07-J 0833 and was the vehicle being driven rashly and negligently by its driver as alleged in the claim petition?

(2) Whether the vehicle was insured with Oriental Insurance Co. Ltd. and was the driver driving the vehicle with valid driving licence, registration certificate and the permit?

(3) To what amount of compensation, if any, the claimants are entitled and from whom?

(4) Whether the accident took place in the manner alleged in para 2 of the written statement of respondent No. 2?

5. After recording the evidence and hearing the parties, Claims Tribunal found that the vehicle was insured with Oriental Insurance Co. Ltd. It further found that the vehicle was being driven with all the valid papers including registration certificate, fitness certificate, driving licence, etc. Issue No. 1 was decided by the Tribunal with the finding that Nandan Singh did die in the accident on 5.7.1999 while travelling in jeep bearing registration No. UP 07-J 0833 on his way from Pauri to Sri Nagar, but it found that the driver was not at fault as he was not rash and negligent in driving the vehicle. For that reason, Claims Tribunal awarded a compensation of Rs. 50,000 only as a no fault liability. A further sum of Rs. 5,000 was awarded on account of loss of consortium to the claimants and Rs. 2,500 was also awarded on account of loss to estate.

6. We heard learned Counsel for the parties and perused the records.

7. Learned Counsel for the appellants argued that learned Tribunal has erred in law in holding that the driver of the vehicle was not at fault. We have closely examined the evidence recorded by the Tribunal. Girdhar Gopal, PW 2, is the eyewitness of the accident who was travelling with the deceased in the jeep bearing registration No. UP 07-J 0833. This witness has stated on oath that vehicle was being driven at a high speed and while negotiating a bend, the driver of the vehicle lost control over the vehicle and as a result it fell into a deep gorge. This witness has further stated that Nandan Singh died in said accident and he himself received injuries. In our opinion, the Claims Tribunal has erred in disbelieving the eyewitness account given by Girdhar Gopal, PW 2. On behalf of the respondents, Manvendra Singh, DW 1, owner of the vehicle, was examined. This witness is not an eyewitness of the said accident. Harish Singh, DW 2, the driver of the vehicle, has stated that when he was driving the vehicle between Pauri and Sri Nagar, near Ufalta at one bend of the road, suddenly a cow came in front of the vehicle, due to which the accident took place. He has denied having driven the vehicle rashly and negligently. If the statement of this witness is accepted that he was driving the vehicle slowly, as soon as the cow came on the road, the driver should have been able to apply the brakes and stop the vehicle on the road. The fact remains unanswered from his statement that if the vehicle was being driven slowly, how it fell in deep gorge.

8. Learned Tribunal has observed in the impugned judgment and award that the roads on the hills are not as wide as that in the plains, as such, it is natural that if suddenly some cow comes on the way, it is difficult to control the vehicle. We are unable to accept the reasoning given by the learned Tribunal, for the reason that the vehicle is not supposed to be driven at the same speed with which it is driven on open roads in the plains. In the circumstances, we are of the view that the statement of Girdhar Gopal, PW 2, is a natural statement and cannot be disbelieved for the reasons mentioned by the Tribunal.

9. As to the amount of compensation, Vikram Singh, PW 1, claimant has stated on oath that deceased Nandan Singh was employed in the office of District Audit Officer, Co-operative Societies, Chamoli, at the time of his death. This witness is son of the deceased. He has stated that apart from himself, his widowed mother Parwati Devi and sister Laxmi are left behind by the deceased. Vikram Singh, PW 1, further stated that his father (deceased) used to spend Rs. 3,000 per month on maintenance of his family, out of the salary he used to get from the office. Paper No. 7-C, Exh. 1, is the statement of salary of the deceased, which shows that the deceased was earning Rs. 4,480 per month. A copy of the extract of the family register (paper No. 8-C, Exh. 2) shows that Parwati Devi is the widow of the deceased Nandan Singh, Vikram Singh is the son of the deceased and Laxmi is the daughter of the deceased. A copy of the post-mortem report (paper No. 11-C), of which formal proof has been dispensed with by the respondent, shows that cause of death of Nandan Singh, aged 45 years, was due to ante mortem injuries received over the head. The ante mortem injuries recorded in the post-mortem shows that there was one lacerated wound and six abrasions on the head of the deceased. The copy of the extract of the general diary (paper No. 9-C, Exh. 4) also corroborates the fact that Nandan Singh died in the accident on 5.7.1999 at about 2.20 p.m., when he was travelling in jeep registration No. UP 07-J 0833, which fell into a gorge on said date. With the above evidence on record, the Tribunal has erred in law in not awarding the actual pecuniary loss suffered by the claimants.

10. From the evidence on record, as discussed above, it is clear that the salary of Nandan Singh at the time of accident was Rs. 4,480 per month. Out of said sum

the deceased would have spent 1/3rd of that amount (i.e., Rs. 4,480/3 = Rs. 1,493) on himself as personal expenses. That being so, the pecuniary loss which the claimants suffered comes to Rs. 4,480 - Rs. 1,493 = Rs. 2,987. Therefore, the annual loss to the claimants is Rs. 2,987 x 12 = Rs. 35,844. Since Vikram Singh, PW 1, son of the deceased, in his statement has admitted that he has got government job on compassionate ground in place of his father and his sister Laxmi (claimant) has also got married, in these circumstances, multiplier of 7 would meet the ends of justice in the present case. As such, the total amount of compensation on account of dependency would be Rs. 2,50,908. If Rs. 5,000 on account of loss of consortium and Rs. 2,500 on account of loss to the estate is added to it, the total amount of compensation to which the claimants are entitled comes to Rs. 2,58,408. It is not disputed that the vehicle was insured, at the time of accident, with respondent Oriental Insurance Co. Ltd., who is liable to pay the amount of compensation to the claimants. It is pertinent to mention here, that the vehicle was found plying with all valid documents, including the driving licence.

11. For the reasons as discussed above, the appeal deserves to be allowed. The same is allowed. The impugned judgment and award dated 8.9.2000, passed in Motor Accident Claim Case No. 41 of 1999, is set aside. The claim petition is allowed for an amount of compensation to the tune of Rs. 2,58,408 (instead of Rs. 59,500) with 6 per cent interest per annum thereon as against the respondent Oriental Insurance Co. Ltd. If the said amount with interest is not paid to the claimants or deposited before the Motor Accidents Claims Tribunal concerned, within a period of one month, from today, the respondent Oriental Insurance Co. Ltd. shall be liable to pay 9 per cent interest per annum on the amount of compensation awarded as above. The amount of Rs. 59,500 and interest thereon deposited under the impugned award shall be adjusted from the awarded sum as above. No order as to costs.