
(2019) 10 UK CK 0011

Uttarakhand High Court

Case No: Appeal From Order No.475 Of 2010

New India Assurance
Company Limited

APPELLANT

Vs

Deepak Kumar &
Others

RESPONDENT

Date of Decision: Oct. 10, 2019

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Citation: (2019) 10 UK CK 0011

Hon'ble Judges: Lok Pal Singh, J

Bench: Single Bench

Advocate: Bindesh Kumar Gupta, Pawan Mishra

Final Decision: Dismissed

Judgement

Lok Pal Singh, J

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 20.08.2010 passed by

M.A.C.T./District Judge, Haridwar in Motor Accident Claim Petition No.93 of 2008, whereby the claim petition of respondent nos.1 to 3/claimants

has been partly allowed for a sum of Rs. 20,51,928/- along with interest @ 6% per annum from the date of filing the claim petition till the date of its

realization. The appellant and the respondent no.5 i.e. owner of vehicle have been directed to pay the amount of compensation jointly and severally

within 60 days. Out of the total compensation, Rs. 50,000/- has been awarded in favour of respondent no.3; Rs. 5,00,000/- in favour of respondent

no.2 and the remaining has been awarded in favour of respondent no.1.

2. Facts, in brief, are that on 06.07.2008 deceased Chandrabhan Maurya was going with his wife Smt. Jugal Kishore to B.H.E.L. Haridwar from

Roorkee by scooter UA08-4922. At about 5:15 pm when he reached near Shankarpuri Temple, a truck bearing no.UK08CA-1197 which was coming

from the opposite direction and was being driven rashly and negligently, hit the scooter, as a result of which Chandrabhan Maurya and his wife Smt.

Jugal Kishore, sustained grievous injuries and died on the spot. This incident was witnessed by Sohan Singh and Ashok Verma. At the time of incident,

the deceased Chandrabhan Maurya was aged 55 years; he was working on the post of Executive Foreman in B.H.E.L. Ranipur and was getting Rs.

30,000/- per month as salary. With these averments, the claimant no.1 (son), claimant no.2 (unmarried daughter) and claimant no.3 (married daughter),

filed the claim petition seeking compensation to the tune of Rs. 33,20,000/-.

3. Respondent no.4 and 5, driver and owner of vehicle, have filed the written statement and denied the averments made in the claim petition. They

denied the factum of accident. They contended that the driver was having valid and effective driving license and the claim petition is bad for non-

joinder of necessary parties.

4. Appellant New India Assurance Company Limited also filed the written statement and denied the averments made in the claim petition. Appellant

contended that there is collusion between petitioner and owner of offending vehicle. It is also stated that the vehicle was being plied without valid

driving license and documents of vehicle and also in breach of terms and conditions of policy.

5. On the pleadings of parties, the Tribunal framed the following issues:-

i) Whether on 06.07.2008 at about 5.15 pm on Roorkee-Haridwar Road when Chandrabhan was going to B.H.E.L. from Roorkee along with his wife

by his scooter then a truck bearing registration no.UK08CA-1197 which was being driven rashly and negligently dashed the scooter, which resulted

into the death of Chandrabhan?

ii) Whether the truck driver was not having valid and effective driving license and the registration certificate, fitness, route permit, etc. of the offending

vehicle were also not valid on the date of incident? If so, its effect?

iii) Whether the alleged accident occurred due to rash and negligent driving by the deceased itself, as has been contended by the appellant in its

written statement? If so, its effect?

iv) Whether the claim petition is bad for non-joinder of necessary parties viz owner, driver and insurance company of the scooter? If so, its effect?

v) Whether the claimants are entitled to receive any compensation, if yes, from which party and to which extent?

6. Thereafter, the parties led their oral and documentary evidence. On behalf of the claimants, PW1 Deepak Kumar, PW2 Ashok Kumar and PW3

Rohtash Kumar were examined. In documentary evidence, claimants filed copy of F.I.R., post-mortem report, salary slip, copy of promotion order of

deceased Chandrabhan, copy of I.T.R. On the other hand, the respondents did not lead any oral evidence. In documentary evidence, copy of

registration certificate, insurance cover note of truck and the driving license were filed. After hearing the learned counsel for the parties and upon

perusal of entire material available on record, the Tribunal passed the impugned judgment and Award as above.

7. Heard learned counsel for the parties and perused the entire material.

8. As the issue nos.1 and 3 were interrelated to each other, the Tribunal decided these issues together. The Tribunal recorded finding that F.I.R. of the

incident was lodged by Virendra Kumar Maurya against the truck driver. The investigating Officer, on completion of investigation, has filed the

charge-sheet against the truck driver, which is on record. The Tribunal further observed that the claimants have got examined PW2 Ashok Kumar as

eyewitness of the accident, who has deposed that the accident occurred on 06.7.2008 at 05.15 pm. The truck driver was driving the truck in a very

rash and negligent manner and hit the scooter due to which Chandrabhan and his wife sustained grievous injuries which resulted into their death at the

spot. On the basis of oral and documentary evidence led by the claimants, the Tribunal decided issue nos.1 and 3 in favour of claimants and held that

the accident has occurred due to rash and negligent driving of truck driver. On issue no.2, the Tribunal recorded finding that this issue was framed on

the basis of pleading of the appellant Insurance Company hence onus lies upon the appellant to prove this fact, however, nothing has been produced by

the company in this regard, whereas on the other hand, copy of driving license, registration certificate and insurance cover note of the offending truck

has been filed which are valid. The Tribunal, under these circumstances, recorded finding that the offending truck was being plied with all the valid

papers and driving license. On issue no.4, the Tribunal recorded finding that the claim petition is not bad for non-joinder of owner, driver and insurance

company of scooter. The Tribunal, on issue no.5, which is in respect of compensation, having considered the salary slip, promotion order as well as the

statement of PW3 Rohtash Kumar, established the monthly income of the deceased as Rs. 31,952/-. The Tribunal deducted one-third towards

personal expenses and applied multiplier of 8, having considered the age of the deceased as 57, and in this way, calculated annual loss of

dependency as Rs. 20,44,928/-. Further, the tribunal has granted Rs. 2,000/- for funeral expenses and Rs. 5,000/- towards loss of love and affection,

and after calculating the figures under all the heads, has awarded compensation @ Rs. 20,51,928/- and directed the appellant and respondent no.5 to

pay the amount of compensation jointly and severally.

9. Learned counsel for the appellant would submit that Award passed by the learned Tribunal is unjustified and unsustainable as it was a case of

contributory negligence of the truck driver and scooterist and the claim petition was bad due to non-impleading of driver, owner and insurance

company.

10. Learned counsel for the appellant would further submit that the compensation awarded to the claimants is exorbitant and not in consonance with

the settled law. He would submit that there should be a deduction of 50% from the income of the deceased towards personal expenses, instead of one-third.

11. As regards the first argument advanced by learned counsel for the appellant that it was a case of contributory negligence, a perusal of record

would reveal that although this fact was pleaded by the appellant in its written statement but the Company did not lead any evidence either oral or

documentary so as to substantiate this assertion. It is well settled principle of law that a person who asserts a particular fact is required to

affirmatively establish it. In the case at hand, the appellant has not proved this fact rather the claimants have denied this fact by producing oral and

documentary evidence in this regard.

12. Insofar as the argument advanced by learned counsel for the appellant that compensation awarded to the claimants is exorbitant, the same is

misconceived. On the basis of income certificate and the statement of PW3 Rohtash Kumar, the Tribunal has rightly established the monthly income

of the deceased as Rs. 31,952/-. Further, as the deceased was married, one-third has rightly been deducted from the salary of the deceased.

Considering the age of deceased as about 57 years, the Tribunal has applied multiplier of 8, which is on lesser side. As per the law laid down

in Sarla Varma & Others vs. Delhi Transport Corporation & Another (2009) 6 SCC 121, for age group 56-60, multiplier of 9 would be

applicable. That apart, the Tribunal has awarded a meager amount of Rs. 2,000/- for funeral expenses and Rs. 5,000/- towards loss of love and

affection, which could have been enhanced in view of National Insurance Company Ltd. v. Pranay Sethi AIR 2017 SC 515.7 In my considered view,

it would have been a case for enhancement of compensation but as there is no appeal for enhancement at the behest of the claimants, compensation

cannot be enhanced on the principle that an appellant cannot be reduced to a position worse than the one he would be in if he had not hazarded to file an appeal.

13. No other point was pressed.

14. In view of the findings recorded above, present appeal from order is devoid of any merit. Same is hereby dismissed. No order as to costs.

15. Let the statutory amount along with the interest accrued on it, if any, be remitted to the Tribunal concerned. Lower court record be also sent back.