

(2010) 05 AHC CK 0328

Allahabad High Court (Lucknow Bench)

Case No: F.A.F.O. No. 279 of 2001

Union of India (UOI) and Another

APPELLANT

Vs

Smt. Chandrakali Chaturvedi and
Others

RESPONDENT

Date of Decision: May 6, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173, 26, 28, 53, 61

Citation: (2012) ACJ 233 : (2010) 4 AWC 3554 : (2011) 128 FLR 141 : (2010) 4 LLJ 474

Hon'ble Judges: Satish Chandra, J; Devi Prasad Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Devi Prasad Singh and Satish Chandra, JJ.

Heard Sri K. D. Nag, learned Counsel for the appellants and Sri Deepak Kumar Agarwal, learned Counsel for the respondents.

Appeal u/s 173 of Motor Vehicles Act, 1988 has been preferred against the impugned award dated 9.2.2001 passed by the Motor Accident Claims Tribunal, Lucknow in Claim Petition No. 21 of 1989, Badri Prasad Chaturvedi and Ors. v. Union of India and Ors.

2. In brief, the deceased Siddh Nath Chaturvedi was an employee of Telecoms Department, Lucknow, working on the post of Assistant Engineer. On 4.10.1988, while he was coming from Sultanpur to Lucknow in the department's jeep No. U.A.E.-7465, because of rashness and negligence on the part of Jeep driver, the Jeep suffered with an accident and by losing its balance, Sri Siddh Nath Chaturvedi suffered grievous injuries and later on succumbed to injuries in the medical college. At the time of death, his monthly income was Rs. 3,357 per month. The F.I.R. was lodged and dependents/legal heirs have approached the Tribunal for payment of compensation. The Tribunal framed five issues. Out of which, the first relates to

accident occurred on 4.10.1988 because of rashness and negligence on the part of Jeep driver. The second issue relates is to entitlement of the claimants for payment of compensation. The Tribunal on the basis of recorded evidence and after providing due opportunity to the parties held that the accident occurred because of rashness and negligence on the part of Jeep driver. The Jeep belonged to the Telecoms department and accordingly, Tribunal held that the department is liable to pay compensation.

3. The Tribunal awarded a compensation to the tune of Rs. 2,87,520 and divided to legal heirs and successors of the deceased. Out of which, Km. Saroj, Sarita and Vinay Chaturvedi were minors. Feeling aggrieved, the appellant approached u/s 173 of the Motor Vehicles Act, 1988.

4. Sri K. D. Nag, learned Counsel for the appellant submitted that the deceased was insured under the Employees State Insurance Act, 1948 in short "Act". Hence, in view of the above provision contained in Sections 53 and 61 of the Act, no compensation be paid under the Motor Vehicles Act. For convenience, Sections 53 and 61 of the Act are reproduced as under:

Section 53-Bar against receiving or recovery of compensation or damages under any other law.-An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.

Section 61-Bar of benefits under other enactments.-When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

5. The provision contained in Sections 53 and 61 of the Act may be made applicable only in case the accident in question may be covered under the provisions contained in the Act.

6. Needless to say that the Act being a special law, in case the case of claimants-respondents is covered under the said Act, then they may not be entitled for the payment of compensation under the Motor Vehicles Act. However, the close scrutiny of the Act shows that the case of the deceased was not covered u/s 28 of the Act. From the reading of the Act, it appears that Act deals with the health insurance of the industrial workers and not with the accident occurred on the road while moving in vehicle. The statement of objects and reasons of the Act is reproduced as under:

Statement of Objects and Reasons.-(1) The introduction of a scheme of Health Insurance for industrial workers has been under the consideration of the

Government of India for a long time. The necessity for such a scheme has become more urgent in view of the conditions brought about by war. The scheme envisaged is one of compulsory State Insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories.

(2) A scheme of this nature has to be planned on an all-India basis and administered uniformly throughout the country. With this object, the administration of the Scheme is proposed to be entrusted to a Corporation constituted by central legislation.

(3) The functions of the Corporation will be performed by a Central Board constituted of representatives of Central and Provincial Governments, and of employers, workers and the medicals profession. The Board will also include certain members elected by the Central Legislative Assembly. A standing committee of the Board will act as the executive of the Board, and a Medical Benefit Council will also be set up to advise on matters relating to the administration of medicals benefit.

(4) The insurance fund will be mainly derived from contributions from employers and workmen. The contributions payable in respect of each workman will be based on his average wages and will be payable in the first instance by the employer. The employer will be entitled to recover the workman's share from the wages of the workmen concerned. Workmen whose earnings do not exceed 10 annas a day will be totally exempt from payment of any share of the contribution, the entire contribution on account of such workmen being met by employer. Provision has been made for the preparation of proper budgets and the audit of accounts.

(5) The insured workman will be entitled to the following benefits:

(a) Sickness Cash Benefit.- a workman, if certified sick and incapable of working, will receive for a period not exceeding 8 weeks in any continuous 12 monthly period a cash allowance equal approximately to half average daily wages during previous six months. He will also be entitled to receive medical care and treatment at such hospitals, dispensaries or other institutions to which the factory in which he is employed may be allotted.

(b) Maternity Benefit.- Women workers will be entitled to receive a maternity benefit at 12 annas a day for 12 weeks. They will also be entitled to medical aid at the aforesaid medical institutions.

(c) Disablement and Dependents' Benefit.- A workman disabled by employment injury will receive for the period of disablement or life depending on whether the disablement is temporary or full and permanent, as the case may be a monthly pension equivalent to half his average wages during the previous twelve months, subject to a maximum and minimum. Where disablement is partial, the pension will be proportionately reduced. In case of death resulting from employment injury the

pension will be payable to the widow or widows" minor sons and minor and unmarried daughters or in case there are no widow and legitimate children, to other dependents of the deceased workman. The workman will also be entitled to medical care and treatment.

(6) Medical care and treatment to insured workman will be provided by Provincial Governments at such hospitals, dispensaries and other institutions as may be prescribed for the purpose. The cost of the medical benefit will be shared between the Provincial Government and the Corporation in such proportions as may be agreed upon between them. In case the average incidence of sickness cash benefit in any Province is in excess of the all-India average, Provincial Government will also bear such share of the cost of the excess incidence as may be agreed upon between it and the Corporation.

(7) Workmen's State Insurance Courts will be set up to decide disputes and adjudicate on claims. The cost of the Tribunal will be paid by the insurance fund.

(8) Central Government will make rules on matters relating to the administration of the Corporation, such as nomination and election of members of the Board, Standing Committee, Medical Benefit Council, powers and duties of the principal officers, raising of loans, investment of funds, accounts to be maintained by the Corporation, their audit and publication. Provincial Government will make rules on matters relating to the Workmen's insurance Courts to be set up under the Act, establishment of hospitals, dispensaries, medical institutions, etc. and the scale of medical benefit to be provided to insured persons. The Board will make regulations on matters relating to the working of the scheme, e.g., collection of contributions, payment of benefits, returns and other particulars to be submitted by employers in respect of workmen employed by them, the conditions to be observed by insured persons, in receipt of benefits, etc.

7. The statement of aims, objects and reasons for the promulgation of Act is to formulate a scheme of health insurance for industrial worker and not to deal with accidental death. It has been planned on all India basis uniformly throughout the country managed by Central Board consisting representatives of the Central and Provincial Government. The insurance fund is derived from contribution of the employees and workmen, which is based on average wages and employer has been authorized to recover the workmen's share from their wages.

8. The aims and objects further clarify that the insured workmen will be entitled for sickness cash benefit, maternity benefit, disablement and dependents benefit. Workmen shall also be entitled for medical care and treatment and related dispute shall be decided by the Workmen State Insurance Court.

Thus, the statement of the aims and object (supra) for promulgation of the Act is to provide necessary assistance for the welfare of employee workmen with regard to their health under the scheme. The various fields covered by the Act have been

enumerated in Section 28 discussed hereinafter.

9. Apart from above, the payment under the Act is made from the fund generated in accordance to the statutory provisions. Section 26 provides that there shall be contribution in the State Insurance Fund and all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the "Employees State Insurance Fund".

10. The fund so generated u/s 26 of the Act shall be used for the purpose enumerated in Section 28 of the Act. For convenience, Section 28 of the Act is reproduced as under:

Section 28. Purposes for which the Fund may be expended : Subject to the provisions of this Act and of any rules made by the Central Government in that behalf, the Employees" State Insurance Fund shall be expended only for the following purposes, namely:

(i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith:

(ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

(iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;

(v) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

(vii) defraying the cost (including all expenses) of the Employees" Insurance Courts set up under this Act;

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

(ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted . or made against the Corporation;

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health, and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured; and

(xii) such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

11. The plain reading of Section 28 of the Act, does not seem to make out a case that it shall cover the accidental death taken place while travelling in the vehicle on road. The fund may be utilized for the treatment and provide medical aid etc. to the employees whose case is covered under the Act. Learned Counsel for the appellant also could not point out any provision under the Act, which may cover the accidental death occurred while travelling in a vehicle may be of the employer itself.

12. It is settled law that in case special law does not cover the controversy, then it shall be dealt with by general law. The Motor Vehicles Act, 1988, specifically deals with the accidental death, injuries and compensation payable thereon. The Tribunal has rightly paid the compensation to the claimants in pursuance of the power exercised under the Motor Vehicles Act, 1988.

13. Apart from above, learned Counsel for the appellant submits that the interest paid to the claimant @12% is excessive.

On the other hand, learned Counsel for the respondents submits that in the year 2001, when the award has been passed by the Tribunal, the rate of interest was around 12%.

While considering the question with regard to quantum of compensation or rate of interest, we have to look into the controversy on the basis of the facts, circumstances and situation of the relevant period, when the award was rendered by the Tribunal.

The petitioner counsel has cited the case in [Uttaranchal Transport Corporation Ltd. Vs. Smt. Vimla Devi and Others](#) , and submits that the interest may be reduced.

14. So far as quantum of compensation and interest is concerned, it depend upon the facts and circumstances of each case as some time, the interest will be higher and the other time, the interest may be lower. It depends upon the banking and market rate. No material has been placed on record by the appellant's counsel to indicate that in the year 2001, when the Tribunal has granted 12%, what was the ordinary interest payable by the Bank to its customers, hence interest paid by Tribunal does not call for reduction. In a case in Oriental Insurance Co. Ltd. v. V.R. Swaminathan and Ors. 2006 (1) TAC 965 (SC), their lordships of Hon"ble Supreme Court had awarded interest @12% per annum from the date of filing of the claim petition while affirming the compensation under the Motor Vehicles Act.

15. In our view, the impugned award passed by the Tribunal does not seem to suffer from any impropriety or illegality.

The appeal is dismissed.

In case some amount has not been deposited by the appellant, it shall be deposited before the Tribunal within two months from today and the Tribunal may proceed in terms of the award. The amount deposited in this Court shall be remitted to the Tribunal forthwith.

No order as to cost.