

Smt. Tahira Khatoon and Others Vs Mahender Lal Arora and Another

Court: Uttarakhand High Court

Date of Decision: March 2, 2007

Acts Referred: Motor Vehicles Act, 1988 " Section 163A, 173

Citation: (2007) 2 UC 1067

Hon'ble Judges: Rajeev Gupta, C.J; J.C.S. Rawat, J

Bench: Division Bench

Advocate: B.S. Parihar, for the Appellant; T.A. Khan and Farida Siddiqui, for the Respondent

Judgement

Rajeev Gupta, C.J.

This is claimants' appeal, u/s 173 of the Motor Vehicles Act, for enhancement of the compensation awarded by the

Motor Accident Claims Tribunal/District Judge, Udham Singh Nagar vide Award dated 18-02-2005 passed in M.A.C.P. No. 118 of 2003.

2. The claimants, who are unfortunate mother, sisters and brother of deceased Afzal @ Guddu, claimed compensation of Rs. 15,00,000/- for his

death in the motor accident on 08-04-2003 when his motorcycle was dashed by the offending vehicle Truck bearing registration No. DL1-LE-

5123 resulting in multiple serious injuries to Afzal @ Guddu, who succumbed to those injuries on the spot itself. The claimants pleaded that

deceased Afzal @ Guddu used to earn Rs. 4,000/- per month as Supervisor in M/s Balaji Brick Works, Thakurdwara.

3. The owner and insurer of the offending vehicle Truck contested the claim and denied their liability to pay compensation to the claimants on the

plea that the motorcyclist himself was negligent and as such was responsible for the accident. The owner further pleaded that as the Truck was

insured, the liability to pay compensation, if any, would be that of the Insurance Company.

4. The claimants examined PW1 Smt. Tahira Khatoon and PW2 Mohd. Laik in support of their claim, whereas the owner and insurer of the

offending vehicle Truck did not examine any witness in rebuttal.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased Afzal @ Guddu died on account of the injuries sustained

by him in the motor accident on 08-04-2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle

Truck and the insurer of the offending vehicle Truck was liable to pay compensation to the claimants.

6. Relying on the evidence led by the claimants about the income of the deceased, including his salary certificate, the Tribunal assessed his income

at Rs. 4,000/- per month. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was

assessed at Rs. 2,667/- per month and Rs. 32,004/- per annum. By multiplying the annual dependency of Rs. 32,004/- with the multiplier of "11",

the compensation was worked out to Rs. 3,52,044/-. By awarding further sum of Rs. 2,000/- towards Funeral Expenses, a total sum of Rs.

3,54,044/- was awarded to the claimants as compensation for the death of Afzal @ Guddu in the motor accident. The Tribunal, further, directed

the insurer of the Truck to pay interest at the rate of 6% per annum on the above amount of compensation.

7. Mr. B.S. Parihar, the learned Counsel for the Appellants submitted that the Tribunal has erred in awarding low compensation of Rs. 3,54,044/-

only and in not awarding any compensation for Loss of Estate.

8. Mr. T.A. Khan, the learned Counsel for Respondent No. 2 The Oriental Insurance Company Ltd., on the other hand, supported the Award

and contended that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 3,54,044/- to the claimants.

9. The findings recorded by the Tribunal that deceased Afzal @ Guddu died on account of the injuries sustained by him in the motor accident on

08-04-2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Truck; and the insurer of the

offending vehicle Truck was liable to pay compensation to the claimants, have, now, attained finality as the Respondents have not filed any appeal

against the Award.

10. As the claimants, themselves, pleaded that the deceased used to earn Rs. 4,000/- per month and the Tribunal has assessed the income of the

deceased at Rs. 4,000/- per month, the claimants cannot have any grievance in that behalf.

11. The claimants' dependency, too, has been rightly assessed by the Tribunal at Rs. 2,667/- per month and Rs. 32,004/- per annum by deducting

1/3rd of the income of the deceased as his personal expenses.

12. The multiplier of "11" selected by the Tribunal is rather on the higher side in view of the dictum of the Apex Court in the case of The Municipal

Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , wherein it has been held that, in those cases where the claimants are parents

of the deceased, the multiplier should not exceed "10".

13. Thus, we do not find any scope for enhancement of the compensation either on account of the assessment of the income of the deceased or the

claimants' dependency or the multiplier selected by the Tribunal.

14. However, the Tribunal has erred in not awarding any sum towards Loss of Estate. In our opinion, the claimants are entitled to Rs. 5,000/-

towards Loss of Estate. We, therefore, award a sum of Rs. 5,000/- towards Loss of Estate. Similarly, the sum of Rs. 2,000/- awarded by the

Tribunal towards Funeral Expenses is on the lower side. The amount of Rs. 2,000/- towards Funeral Expenses was prescribed in the Second

Schedule u/s 163-A of the Motor Vehicles Act in the year 1994. If the steep rise in the prices of the commodities, including fuel wood, is taken

into account, the amount of Rs. 2,000/-, prescribed in the year 1994, would certainly come to Rs. 5,000/- in the year 2003. We, therefore,

enhance the sum of Rs. 2,000/-, awarded by the Tribunal towards Funeral Expenses, to Rs. 5,000/-.

15. With the above addition/enhancement, the claimants become entitled to receive a total sum of Rs. 3,62,044/- as compensation. We, further,

award quantified interest of Rs. 2,000/- on the enhanced amount of compensation of Rs. 8,000/-.

16. For the foregoing reasons, the appeal filed by the claimants u/s 173 of the Motor Vehicles Act for enhancement of the compensation is allowed

in part. The compensation of Rs. 3,54,044/- awarded by the Tribunal is enhanced to Rs. 3,62,044/- (Rupees Three Lakhs Sixty Two Thousand

and Fourty Four only) with further quantified amount of interest of Rs. 2,000/- on the enhanced amount of Rs. 8,000/-. Respondent No. 2 The

Oriental insurance Company Ltd. is directed to deposit the enhanced amount of compensation of Rs. 8,000/- and the interest component of Rs.

2,000/- (Total Rs. 10,000/-) within a period of two months from today before the concerning Claims Tribunal.

17. No order as to costs.