

Uttaranchal Transport Corporation Vs Rachna Bisht and Others

Court: Uttarakhand High Court

Date of Decision: June 27, 2005

Acts Referred: Motor Vehicles Act, 1988 " Section 173

Citation: (2005) 3 ACC 397 : (2005) ACJ 1772 : (2005) 3 UC 1937 : (2005) 2 UD 20

Hon'ble Judges: Prafulla C. Pant, J; P.C. Verma, J

Bench: Division Bench

Advocate: A.N. Sharma, for the Appellant; P.S. Rawat, for the Respondent

Judgement

Prafulla C. Pant, J.

This appeal, preferred u/s 173 of Motor Vehicles Act, 1988, is directed against the judgment and award dated

25.1.2005, passed by the Motor Accidents Claims Tribunal/2nd Additional District Judge, Nainital, whereby Rs. 7,25,000 has been awarded as

amount of compensation to the respondents.

2. Brief facts of the case are that on 27.2.2004 at about 6.30 p.m., Kishan Singh (deceased) was travelling by bus, registration No. UP 06-4140,

owned by appellant, on its way from Nainital to Haldwani. Near Baldiyakhan due to the negligence on the part of the driver of the bus, it fell down

in the deep gorge in which some twenty persons including Kishan Singh Bisht died. At the time of the death, deceased was aged 39 years and he

was earning Rs. 7,011 per month as. he was working as the Assistant Office Manager with the appellant.

3. The appellant Uttaranchal Transport Corporation contested the claim petition before the Claims Tribunal and it pleaded that another vehicle was

coming from the opposite direction and to save that vehicle the bus fell into the deep gorge. It is further pleaded that family members of the

deceased have been paid Rs. 25,000 as ex gratia payment and the same is liable to be adjusted. Learned Tribunal, after framing the issues and

recording the evidence and hearing the parties, allowed the claim petition for Rs. 7,25,000, aggrieved by which this appeal has been preferred by

the Corporation.

4. We heard learned Counsel for the parties and perused the entire record. We also heard the parties on cross-objection.

5. The factum of the accident and death of Kishan Singh Bisht is admitted between the parties. PW 1 Rachna Bisht, widow of the deceased, has

stated on oath that her deceased husband was Assistant Office Manager with Uttaranchal Transport Corporation. She further stated on 27.2.2004

that due to negligence on the part of the driver of the bus bearing registration No. UP 06-4140, the bus fell into the deep gorge. DW 1 A.D.

Kotwal, the conductor of the bus has stated that to save the vehicle coming from the opposite direction, the bus fell into the deep gorge. But

evidence adduced on behalf of the appellant before the trial court is rightly not believed by the learned Tribunal, as had the bus driver been not rash

and negligent, he would have been able to stop the bus on the road itself.

6. During arguments, learned Counsel for appellant argued that the multiplier applied by the learned Tribunal is too high. In this connection, he

relied on the principle of law laid down in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, . In the said case, deceased

was aged 38 years and the multiplier of 16 applied by the Tribunal and the High Court was found to be on the higher side by the Apex Court

which applied multiplier of 12. In the present case also in view of said judgment, it can be said that multiplier of 13 is higher, according to the age

of the deceased. Learned Counsel for respondent drew our attention to the case-law reported in Sunita Baveja and Others Vs. D.T.C. and

Another, . In the said case, Delhi High Court has applied multiplier of 16 in respect of similarly aged deceased. As against said case, the judgment

of the Apex Court is more binding on this Court, as such, we have no hesitation in holding that multiplier of 12 would have been just and proper in

the present facts and circumstances of the case. There is no dispute between the parties as to the annual income of Rs. 84,000 of the deceased out

of which, after deducting one-third which the deceased would have spent on himself, the loss to the claimants/respondents is Rs. 56,000 per

annum. Therefore, the claim petition should have been allowed by the Claims Tribunal for Rs. 56,000 x 12 = Rs. 6,72,000. After adjusting the ex

gratia payment learned Tribunal appears to have assessed the loss at Rs. 7,15,000. However, Rs. 10,000, awarded towards funeral expenses and

consortium appear to be just and proper. Therefore, the appeal deserves to be allowed partly. Accordingly, appeal is partly allowed. We modify

the impugned award to the extent that the appellant shall pay to the claimants a sum of (Rs. 6,72,000 + Rs. 10,000) instead of (Rs. 7,15,000 +

Rs. 10,000), awarded by the Tribunal. If the amount is not already deposited in compliance of the interim order of this Court by the appellant,

respondents shall be entitled to the interest at the rate of 7 per cent per annum from today. Cross-objections are rejected.