IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

A.O. No. 140 of 2008

Smt. Satyeshwari and others - Appellants.

Versus

Bhim Singh Rawat and another - Respondents.

Mr. Niranjan Bhatt, Advocate for appellants.
Mr. Lalit Belwal, Advocate for respondent No.1.
Mr. B.K. Gupta, Advocate, for respondent No.2.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred against the judgment and award dated 23-6-2007, passed by Motor Accident Claim Tribunal, Uttarkashi, in MACT Case No. 43 of 2005, Smt. Sateshwari and others Vs. National Insurance Company and another for enhancement of compensation by the claimants, whereby a sum of Rs. 1,52,000/- has been awarded as compensation along with interest @ 6% per annum from the date of filing the claim petition till the date of actual payment, payable by National Insurance Company.

The claimants filed claim petition with the allegations that on 16-8-2005, at about 4.00 P.M. Raghubir Singh was returning his home riding in vehicle No. H.R. 01-P-1084. The vehicle met with accident near Gangnani due to rash and negligence of its driver. Raghubir Singh died at the spot. He was 42 years of age and he was earning Rs. 4,000/- per month by doing the labour work in Electricity Department and Rs. 5000/- per month by selling milk.

The owner of the vehicle filed written statement and alleged that the vehicle was insured with National Insurance Company. The accident had occurred due to some mechanical defect in the vehicle. The driver was driving the vehicle cautiously. The owner denied his liability.

The National Insurance Company also filed written statement and alleged that the accident did not occur due to rash and negligence of the driver but it had occurred due to some mechanical defect in the vehicle. The insurance company also alleged that the claimants have given wrong description of income of the deceased.

The vehicle was not having fitness certificate and permit. The petition is bad for non-joinder of necessary party and is liable to be dismissed.

The Tribunal framed issues in the petition. Thereafter parties led evidence and the tribunal after hearing parties and considering the evidence on record, awarded a sum of Rs. a sum of Rs. 1,52,000/- as compensation along with interest @ 6% per annum from the date of filing the claim petition till the date of actual payment, payable by National Insurance Company.

Feeling dissatisfied with the compensation the claimants have preferred this appeal for enhancement.

I have heard learned counsel for the claimants/appellants as well as counsel for respondents.

Learned counsel for the appellants has submitted that the tribunal has committed error by taking Rs. 15,000/- as notional income of the deceased for the purpose of calculating the compensation. According to him the accident had occurred in the year 2005 and the notional income should have been taken as Rs. 36,000/- per annum due to hike in price.

I have gone through the impugned award. The learned Tribunal has framed issue No.3 on the point of compensation. The learned Tribunal has not believed the assertion of claimants on the points of income of the deceased in absence of any documentary and reliable evidence and took the notional income of Rs. 15,000/- per annum, which is certainly on lesser side.

The accident in the case in hand had taken place in the year 2005, therefore, the notional income of the deceased is taken as Rs. 36,000/- per annum, due to hike in price index and after deducting 1/3rd towards personal expenses of the deceased, the net annul dependency of the claimants comes to Rs. 24,000/-. The Tribunal has applied the multiplier of 13 at the age of 46 years, which is just and proper. Therefore, the compensation comes to Rs. 24,000/- X 13= Rs.3,12,000/-. The tribunal also awarded a sum of Rs. 2,000/- towards funeral expenses and lump sum amount Rs. 20,000/- towards loss of love and affection and suffering faced by claimants due to death of deceased. In my opinion the claimants are entitled to get these sums. In this way the total compensation comes to Rs. 3,12,000/-+ Rs. 2,000/-+Rs. 20,000/-= Rs.3,34,000/-.

For the discussion made above, the appeal is liable to be allowed.

The appeal is partly allowed. The claimants/appellants are entitled to get a sum of Rs. 3,34,000/- as compensation payable by National Insurance Company instead of Rs. 1,52,000/- as has been awarded by the Tribunal. The rate of interest awarded by the tribunal shall remain intact. The impugned award is modified accordingly.

Dated: 29-03-2011 **(B.S. Verma, J.)**

ISB