

NEW INDIA ASSURANCE COMPANY LTD.

A

v

SMT. SHANTI PATHAK AND ORS.

JULY 10, 2007

[DR. ARIJIT PASAYAT, P.K. BALASUBRAMANYAN AND D.K. JAIN, JJ.]

B

Motor Vehicles Act, 1988—Motor accident—Death—Compensation—In one case age of deceased was 25 years—In another case age of deceased 52 years—Tribunal awarding compensation—By applying multiplier of 17 in case of 25 years old deceased—By applying multiplier of 13 in case of 25 years old deceased—Propriety of application of multiplier—Held: In case of 25 years old deceased multiplier altered to 5 in view of the advance age of the claimants—In case of 52 years old deceased multiplier altered to 8 in view of age of deceased—Compensations altered accordingly.

C

In a case of motor accident, where the age of deceased was 25 years and age of the claimant was 65 years and more at the time of accident, Motor Accident Claim Tribunal awarded compensation applying multiplier of 17 in view of age of the deceased.

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In another case where the age of the deceased was 52 years, Tribunal awarded compensation applying multiplier of 13. The appeals by appellant-insurer were dismissed by High Court.

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Hence the present appeals.

Partly allowing the appeals, the Court

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HELD: 1. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. Considering the fact that the matter is pending since long, it would be appropriate not to remit the case back to High Court and to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs. 3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs. 2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment

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A already made shall be adjusted from the amount due. [Para 7] [239-E, F, G]

2. In the case where the age of the deceased was 52 years as per the post mortem report, and the multiplier thus has to be 8 instead of 13 as adopted by the Tribunal and upheld by the High Court. The rate of interest awarded does not need any interference. The monthly income has to be taken as Rs.

B 11, 684/- and one-third has to be deducted therefrom for personal expenses. Thus, entitlement for loss of income comes to Rs. 7,44,000/-. The other amounts awarded by the Tribunal totaling Rs. 29,500/- remain unaltered. Thus the claimant is entitled to Rs. 7,73,500 alongwith interest at the rate fixed by the Tribunal. The payment already made shall be adjusted. [Para 9]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2926-2927 of 2007.

From the Final Judgment & Order dated 28.08.2004 and 31.03.2005 of the High Court of Uttranchal at Nainital in Appeal from Order No. 233 of 2004 and Review Application No. 6554 of 2004 in Appeal From Order No. 233 of 2004 respectively.

D

WITH

C.A. No. 2928 of 2007.

E S.L. Gupta, B.K. Sharma and Goodwill Indeevar for the Appellant.

G.E. Vahanvati, SG., Binu Tamta, B.K. Prasad, P.N. Puri, Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra and Debasis Misra for the Respondents.

F The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. C.A. NOS. 2926-2927/07 @ SLP © Nos. 20101-02/05.

G 1. Leave granted.

2. Challenge in this appeals is to the legality of the judgment rendered by a Division Bench of Uttranchal High Court dismissing the appeal filed before it under Section 173 of the Motor Vehicles Act, 1988 (in short the 'Act'). The Motor Accidents Claims Tribunal/Addl. District Judge, F.T.C. Nainital (hereinafter referred to as the 'tribunal') awarded a sum of Rs.4,10,000/- in

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favor of the respondents 1 and 2 (hereinafter referred to as the 'claimants'). A

3. The background facts which are almost undisputed essentially are as follows:

4. On 11.11.2002 Hem Pathak (hereinafter referred to as the 'deceased') who was at the relevant point of time 25 years of age lost his life in a vehicular accident. He was traveling in Jeep No.UP 03/0805. The said jeep had a collision with truck bearing No.UP 20A-8491. Since the truck was the subject matter of insurance, the parents of the deceased filed a Claim Petition. The Tribunal as noted above awarded Rs.4,10,000/-. Since the age of the deceased was 25 years, multiplier of 17 was applied. The Tribunal referred to various decisions of this Court for quantifying the amount as Rs.4,10,000/-. B C

5. Before the High Court it was contended by the appellant that the multiplier to be adopted is to be determined on the age of the claimants and not on the age of the deceased, which was to be taken as the basis for working out the compensation. The High Court did not find any substance in this plea. It was held that no permission had been granted to the insurer to contest its claim. It was submitted that it is a clear case of contributory negligence and the quantum of compensation should be suitably divided. The High Court did not find any substance in this plea also. D

6. In support of the appeal, learned counsel for the appellant submitted that both the trial Court and the High Court failed to notice the age of the claimants which was relevant and not the age of the deceased. E

7. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due. F G

8. The appeal is disposed of accordingly with no order as to costs. H

A Civil Appeal No. 2928/07 @ SLP © No.3957/06

9. In the instant case the age of the deceased was 52 years as per the post mortem report, and the multiplier thus has to be 8 instead of 13 as adopted by the Tribunal and upheld by the High Court. The rate of interest awarded does not need any interference. The monthly income has to be taken as Rs. 11,684/- and one-third has to be deducted therefrom for personal expenses. Thus, the annual loss of income comes to Rs.93,939/-. The same is rounded to Rs.93,000/-. The entitlement for loss of income comes to Rs.7,44,000/-. The other amounts awarded by the Tribunal totaling Rs.29,500/- remain unaltered. Thus the claimant is entitled to Rs.7,73,500 along with interest at the rate fixed by the Tribunal. The payment already made shall be adjusted.

The appeals are allowed to the aforesaid extent with no order as to costs.

K.K.T.

Appeals partly allowed.