

CASE NO.:
Appeal (civil) 2926-2927 of 2007

PETITIONER:
New India Assurance Company Ltd

RESPONDENT:
Smt. Shanti Pathak and Ors

DATE OF JUDGMENT: 10/07/2007

BENCH:
Dr. ARIJIT PASAYAT P.K. BALASUBRAMANYAN & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 2926-2927 OF 2007
(Arising out of SLP (C.) Nos.20101-02 OF 2005)
(With C.A.No2928/07 @ SLP (C) No.3957 of 2006)

Dr. ARIJIT PASAYAT, J.

CIVIL APPEAL NOS. 2926-2927 OF 2007
(Arising out of SLP (C.) Nos.20101-02 OF 2005)
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 favor of the respondents 1 and 2 (hereinafter referred to as the 'claimants').

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/-.

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.

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.

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.

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

(With C.A.No2928/07 @ SLP (C) No.3957 of 2006)

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 alongwith 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.