

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.27 of 2021

Uttarakhand Jal Sansthan and another Appellants

Versus

Sunil Sareen Respondent

Present:-

Mr. Xitij Kaushik, Advocate for the appellants.

Mr. Hari Mohan Bhatia, Advocate for the respondent.

With

Appeal from Order No.432 of 2019

Sunil Sareen and another Appellants

Versus

Uttarakhand Jal Sansthan and another Respondent

Present:-

Mr. Hari Mohan Bhatia, Advocate for the appellants.

Mr. Xitij Kaushik, Advocate for the respondent.

Hon'ble Sharad Kumar Sharma, J. (Oral)

These are two connected Appeals from Order but prior to consider the Appeal from Order for enhancement, as it has been preferred by the claimant i.e. connected Appeal from Order No.432 of 2019, since it requires an appreciation of evidence with regards to the manner in which the Motor Accident Claims Tribunal has determined the compensation, let it be heard separately.

2. Let the Lower Court Record be summoned along with A.O. No.432 of 2019 (which has to be decided later on receipt of the Lower Court Records).

3. The Appeal from Order No.27 of 2021 had been preferred by Uttarakhand Jal Sansthan by giving a belated challenge to the award dated 03.07.2019, as it was rendered by the learned Motor Accident Claims Tribunal in MACP No.165 of 2017, Sunil Sareen vs. Uttarakhand Jal Sansthan, whereby, upon determination of facts and evidence on record, the learned Motor Accident Claims Tribunal has awarded an amount of Rs.32,26,412/- along with interest @ 7% payable on it to the claimant for injuries suffered.

4. The brief facts as it engaged consideration are that the respondent herein in A.O. No.27 of 2021, was the victim who is said to have met with an accident on 28.05.2018, whereby, it was contended that while he was riding on a Scooty bearing Registration No.UK 07AY 1594 and was going from Haridwar to Rishikesh. When he reached near the TVS Showroom, a Tanker bearing Registration No.UA 07C 7675, which admittedly belonged to the present appellant and was at the relevant time was being driven rashly and negligently by the respondent

no.2 to the claim petition, which has resulted into an accident causing major injuries to the claimant.

5. It was contended by the claimant that on the date when the accident has chanced, the victim was of 24 years of age and as per the evidence of engagement which was on record, it was contended by the claimant, that since he was working as a technical operator, he used to earn a sum of Rs.12,000/- per month and accordingly, the claimants to the claim petition have prayed for an award of compensation to the tune of Rs.1 crore.

6. The appellants herein had filed their written statement being Paper No.27B. The factum of accident having been chanced on 28.05.2016, by the use of the tanker, which was belonging to them was a fact which was not disputed by the present appellants and further they have not disputed the fact, that at the time when the accident had chanced, the respondent no.2 i.e. Mr. Ritesh was the driver, who was employed by them to drive their vehicle and further in accordance with the pleading and the issue, which has been ultimately determined, the issue has been finally decided.

7. The learned Motor Accident Claims Tribunal has ultimately based on evidence had come to a conclusion, firstly, that the factum of accident having been chanced on 28.05.2016, was a fact admitted by both the parties and apart from, that it was also stood corroborated by the evidence which was placed on record.

8. Secondly, it has further come on record while deciding Issue No.1, that the tanker, which belonged to the present appellants and was the offending vehicle, resulting to the cause of the accident dated 28.05.2016. It has further come on record, that at the time when the accident had chanced, the driver of the offending vehicle was not having a valid driving licence and as such it was argued, that since the vehicle was being driven contrary to the terms of the insurance policy as such the entire liability of payment of compensation was to be fastened upon the present appellants.

9. The learned Motor Accident Claims Tribunal for the purposes of assessment as regards to determining the compensation which would payable to the claimants had examined the witnesses Vinod Kumar P.W.7 and Deepak Kumar P.W.6, with regards to the factum of actual medical expenditure, which had been incurred by the

appellants for getting the treatment in different hospitals, coupled with the fact, that as per the observations made in paragraph 24 of the impugned judgment, he was kept under treatment in Himalaya Hospital, Jolly Grant, Dehradun, for quite a long time, where he had initially spent the expenditure of Rs.2,10,388/-.

10. Apart from the aforesaid fact, the counsel for the claimants/respondents, has submitted, that according to the doctors, who were attending upon the victim, owing to the gravity of the injuries, had recorded the statement, that the injuries were grievous enough and appropriate treatment of which is not available in India and thus it was advised that for the aforesaid treatment, he should go to America to get himself treated over there and for which it was contended by the claimants, that they will have to incur heavy expenditure, which according to them, has been determined by the learned Motor Accident Claims Tribunal, without there being any foundation or credible basis being made by the learned Motor Accident Claims Tribunal.

11. But so far as the instant Appeal from Order is concerned, as it has been preferred by the Jal Sansthan, since the fact of ownership of the vehicle belonging to

them! the fact of the accident having being chanced! the fact of the gravity of injuries suffered by the claimant! the fact that the driver of the offending vehicle (belonging to the appellants) was not having a valid licence on the date of the accident! The liability as fastened upon the present appellants by the learned Motor Accident Claims Tribunal, by impugned award dated 03.07.2019, cannot be said to suffer from any apparent error or misappreciation of evidence, for the reason being, that the learned Motor Accident Claims Tribunal has considered the detailed evidence placed on record about the medical expenditure which was proved to have been incurred for treatment, as well as the statement of the witnesses which was recorded with regard to the gravity of the injuries and considering the aforesaid fact the learned Motor Accident Claims Tribunal, after considering the wider principles laid down by the Hon'ble Apex Court in the matters of **Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC 434**, wherein the wider principle has been given in para 6 of the said judgment, that the learned Motor Accident Claims Tribunal is bound to consider the various heads on which the claimants/injured would have incurred an expenditure, which should constitute to be taken, as to be the pecuniary investment which has been

made by the victim for getting himself appropriately treated.

11. The learned Motor Accident Claims Tribunal while making its observation pertaining to the income accruing to the victim had recorded its finding based on appreciation of evidence, to the effect that the total expenditure as it was proved to be incurred by the claimant according to the evidence brought on record was assessed as to be Rs. 21,26,412/-. Apart from that, the future loss and the probable expenditure, which the appellants would have to incur and the determination as it has been made in para 34 was based upon the rational consideration of available material and the evidence which was placed by the claimants before the learned Motor Accident Claims Tribunal. Hence, so far as the determination of compensation on its mathematical computation, as to be Rs. 32,26,412/- along with interest made payable on it, as awarded by the Motor Accident Claims Tribunal @ 7% per annum does not suffer from any apparent error, because it is the admitted case of the appellants herein itself with regards to facts discussed above.

12. But so far as the Appeal from Order No.27 of 2021, is concerned as preferred by the Uttarakhand Jal Sansthan, factually, their liability cannot be shifted upon to the insurance company, its not in controversy because of the admitted case as referred to hereinabove, their claim petition qua the challenge given to the impugned award dated 03.07.2019 would stand dismissed. Having observed so while dismissing the Appeal from Order, as preferred by the Uttarakhand Jal Sansthan, its findings would be confined for adjudication to the Appeal from Order, as preferred by the Jal Sansthan only.

13. As far as the Appeal from Order, as it has been preferred by the claimant being AO No.432 of 2019, the same would be independently considered upon the records being received by the Registry of this Court of MACP No.165 of 2017 the same would be independently considered after receipt of the record of the court below.

(Sharad Kumar Sharma, J.)
11.12.2023

Ravi