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(2009) 01 UK CK 0010

In the Uttarakhand High Court

Case No : A.O. No. 505 of 2007

Anubhav Kumar Agarwal APPELLANT

Vs

The New India Assurance Company Ltd. and Others RESPONDENT

Date of Decision : 02-01-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2009) 01 UK CK 0010

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Pankaj Purohit, for the Appellant; P.C. Maulekhi and Pramod Belwal, for Respondents 3 to 8, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, arises out against the judgment and award dated 24-9-2007, passed by Motor Accident Claims Tribunal/Addl. District Judge, Roorkee, Haridwar, in MACT Case No. 146/2006, Smt. Mukesh and Ors. v. Anubhav Kumar and Anr.

2. Brief facts of the case are that on 15-8-2006 at about 1.30 P.M. deceased Nagendra was going to Rampur Chungi riding in Hero Hone Motorcycle. When he reached near B.S.M. three road junction, suddenly Tractor No. U.A. 08-E-9298 having Trolley No. U.A. 08-E-9299 came there in a rash and negligent manner and dashed the Motorcycle on wrong side due to which Nagendra died at the spot. Therefore the claimants filed petition for compensation.

3. The opposite party No. 1, owner of offending tractor trolley filed his written statement and alleged that the accident has occurred due to the own fault of the motorcyclist as he has dashed the tractor in a rash and negligent manner. He further alleged that the tractor was insured with New India Assurance Company and the compensation if any shall be borne by the insurer as well as the motorcycle driver in equal share.

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4. The opposite party No. 2, New India Assurance Company also filed its written statement and alleged that the petition is bad for non-joinder of insurer of the offending Motorcycle as party to claim petition. It further alleged that the accident has occurred due to own fault of the deceased and the driver of the tractor was not having valid and effective driving license. Therefore the insurance company cannot be held liable to pay the compensation.

5. The learned tribunal on the pleading of parties framed the following issues:

1- Whether the alleged death of deceased Nagendra has occurred due to rash and negligence of the driver of Vehicle No. U.A. 08-E-9298 on 15-8-2006 at about 1.30 P.M. at B.M.S. Tiraha, Roorkee?

2- Whether the claimants are the legal heirs of the deceased and are entitled to get compensation?

3- Whether at the time of alleged accident the driver was having valid driving license and the vehicle in question was also possessing valid documents?.

4- Whether the claimants are entitled to get any compensation? If so, from whom and to what amount?

6. The parties adduced evidence in support of their case. Thereafter the learned Tribunal after hearing learned Counsel for the parties and considering the material on record, awarded a sum of Rs. 5,91,000/- as compensation along with interest @ 7% per annum from the date of filing the petition till the date of actual payment against the New India Assurance Company. The tribunal further directed that the insurance company shall deposit the amount of compensation within a month and on depositing the amount in the court by the insurance company within a month, the opposite party No. 1. Anubhav Kumar, shall pay the amount of compensation to the insurance company within a month, failing which the insurance company shall have a right to recover the aforesaid amount from Anubhav Kumar.

7. Feeling aggrieved Anubhav Kumar Agarwal, owner of the offending tractor-trolley has preferred this appeal.

8. I have heard the learned Counsel for the parties and perused the record.

9. The first contention raised by learned Counsel for the Appellant is that the driver of the Tractor-Trolley was holding a valid driving license, which authorized the driver to drive the light motor vehicle, but the tribunal has failed to consider this aspect of the matter that the Tractor Trolley is a light motor vehicle and has wrongly held that the driver of the offending Tractor Trolley had no valid driving license to drive the commercial vehicle, i.e. Tractor Trolley and accordingly gave recoverable right to the insurance company against the owner.

10. I do not find any substance in the above submission advanced by the learned Counsel for the owner/Appellant. The tribunal has framed issue No. 3 on the point of the driver having valid and effective driving license or not. The owner

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has filed the documents pertaining to the offending Tractor Trolley, i.e. registration of tractor paper No. 39-C, registration of trolley paper No. 38-C, driving license paper No. 40-C, Cover Note paper No. 7-C/3 to 7-C/7, permit paper No. 7-C/8 and the tribunal has found these documents valid one, except the driving license. From perusal of driving license paper No. 40-C, it reveals that although this license was valid at the time of accident for driving the motorcycle as well as light motor vehicle during the period 12-4-2006 to 11-4-2007, but it has specifically been mentioned in this license that it is valid for driving non-transport vehicles. Therefore, it is quite clear that the said driving license was not meant for driving the transport vehicle. The offending Tractor Trolley was registered for commercial purposes. In the statement of P.W.2, Sundar it has come that at the time of accident the trolley was attached with the tractor and it was filled with sand and the tractor trolley was being used for commercial purposes. As the driver of the offending tractor trolley did not possess a driving license to drive the commercial vehicle therefore, it can safely be inferred that he was not having valid driving license. I do not find any infirmity in the above finding recorded by the learned Tribunal and I also hold that the driver was not having valid driving license to drive the commercial vehicle, i.e. offending Tractor Trolley at the time of accident.

11. The learned Counsel for the owner/Appellant also submitted that the tribunal has adopted the multiplier on higher side and hence the tribunal awarded a huge amount of compensation, therefore, the same should be reduced.

12. Again this second submission of the learned Counsel for the Appellant bears no force. According to the claimants the deceased used to work on a Milk Tanker and his monthly income was Rs. 4,000/-. P.W.3, Kamendra Singh has deposed that the deceased was employed as conductor in his Tanker No. U.A. 08-C-9934 and he used to give him salary of Rs. 4,000/- per month. Pay register paper No. 36-C has been filed, in which during the months of January 2006 to August 2006 salary of Rs. 4,000/- per month has been shown given to the deceased. No evidence in rebuttal to question the genuineness of this document has been filed by the opposite parties. Therefore, the tribunal has assessed the monthly income of the deceased as Rs. 4,000/- per month and the annual income being Rs. 48000/-. The learned tribunal also deducted 1/3PrdP out of this amount towards personal expenses of the deceased and has taken the actual dependency of the claimants upon the deceased as Rs. 32,000/- per annum. The age of the deceased at the time of accident was 26 years and the tribunal has adopted the multiplier of 18 as per Schedule-II appended with Section 163-A of the Motor Vehicle Act. It has come on record that the deceased has left behind his young widow, three minor children and parents, therefore, therefore, looking to the number, age and the dependency of the claimants upon the deceased, the multiplier adopted by the learned tribunal cannot be said to be on higher side in this particular case. After adopting the multiplier of 18 the compensation comes to Rs. 32,000/- ? 18 = Rs. 5,76,000/-. The tribunal further awarded a sum of Rs. 5,000/- each under the heads of funeral expenses, loss of company and loss of

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estate and in my opinion the claimants are entitled to get these sums awarded by the tribunal. Therefore the total compensation comes to Rs. 5,76,000/- + Rs. 5,000/- + Rs. 5,000/- + Rs. 5,000/- = Rs. 5,91,000/-. The tribunal also awarded interest @ 7% per annum from the date of filing the petition till the date of actual payment. In my view the tribunal has awarded a reasonable interest.

13. For the discussion made above, the appeal lacks merit and is liable to be dismissed.

14. Accordingly, the appeal is dismissed. The impugned judgment and award is hereby confirmed.

15. Let the statutory amount deposited by the Appellant before this Court, be remitted to the tribunal concerned.

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