(2009) 06 UK CK 0024

In the Uttarakhand High Court

Case No : Appeal from Order No. 7 of 2008

Charan Singh APPELLANT

Vs

National Insurance Company Ltd. and Others RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 3 UC 1425

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

Bench : Single Bench

Advocate : Sri R.P. Nautiyal, for the Appellant; Sri Prabhat Pande for Respondent No. 1 Sri R.B. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed by the Appellant/owner of the vehicle against the judgment and order dated 08.10.2007 passed by Motor Accident Claims Tribunal/District Judge, Pauri Garhwal in Motor Accident Claim Case No. 109 of 2005, Smt. Shanti Devi and Anr. v. Charan Singh and Ors..

2. Brief facts of the case are that on 22.07.2005, the deceased - Ravinder Singh Khatri was going from Kirtinagar to Srinagar on his scooter No. UP07H/9390 along with his nephew who was five years of age. At about 05:00 p.m., when he reached at Pauri Chungi, a bus bearing registration No. UA07C/9252, which was being driven by its driver in a very rash and negligent manner, hit the said scooter, due to which he sustained serious injuries. He was immediately admitted in the Srinagar Hospital where the doctors considering the injuries of the deceased referred him to higher center. Thereafter, he was taken to Dehradun but he had died on the way to Dehradun. At the time of the death, the deceased was working as a Senior Clerk in Public Works Department and used to earn Rs. 8,689/-. According to the claim petition, the deceased was 50 years of age on the date of accident. The claimants are the legal representatives of the deceased.

Hence, an amount of Rs. 14.00 lacs was claimed as compensation.

3. The notices were issued to the opposite parties. The opposite party No. 1 - Charan Singh (owner of the bus No. UA07C/9252) contested the claim petition by filing written statement before the Tribunal alleging therein that the accident took place due to rash and negligent driving of the deceased. It has also alleged that the driver of the vehicle was having the valid and effective driving licence on the date of accident. It has also pleaded that the bus in question was insured with the National Insurance Company Ltd., therefore, the liability of compensation lies upon the insurer of the vehicle.

4. The opposite party No. 2 - National Insurance Company Ltd. also contested the claim petition alleging therein that the deceased himself driving the scooter No. UP07H/9390 and he was not having the valid and effective driving licence. It has also alleged that the driver of bus No. UA07C/9252 was not having the valid and effective driving licence. It has also pleaded that both the vehicles did not possess the valid papers on the date of accident. Therefore, the claim petition was liable to be dismissed on the above ground.

5. The opposite party No. 3 - New India Assurance Company Ltd. - insurer of the scooter also contested the claim petition on the ground that the accident took place due to rash and negligent driving of the driver of the bus, therefore, the applicant is not liable to pay any compensation.

6. On the basis of the pleadings of the parties, the Tribunal has framed relevant issues in the claim petition. Thereafter, both the parties led evidence in support of their case. After hearing Learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 7,26,000/- along with conditional compound interest @ 9% per annum vide judgment and order dated 08.10.2007. The Tribunal also directed the owner of the bus No. UA07C/9252 to pay the amount of compensation.

7. Feeling aggrieved by the aforesaid judgment and award, the Appellant/owner of the bus has preferred this appeal before this Court.

8. Heard Sri R.P. Nautiyal, Learned Counsel for the Appellant, Sri Prabhat Pande, Learned Counsel for the Respondent No. 1, Sri R.B. Agarwal, Learned Counsel for the Respondent No. 4 and perused the record.

9. As far as the factum of accident is concerned, the finding recorded by the Tribunal that the accident took place on account of rash and negligent driving of the driver of the offending bus is concerned, that appears to be completely justified and I am in total agreement with the findings recorded by the Tribunal in this regard.

10. Learned Counsel for the Appellant has firstly submitted before me that the Tribunal has given a perverse finding while directing the owner to pay the amount of compensation on the ground that the driver of the offending bus was not having the valid and effective driving licence on the date of accident.

11. The sole criteria adopted by the Tribunal in this regard is that the owner of the offending vehicle has produced the photocopy of the driving licence of the driver. There should have been specific denial by the Insurance Company that the driver was not having valid and effective driving licence on the date of accident. It is not a case that the driving licence of the driver was not in existence at the time of the accident. The Insurance Company at its best could have verified the driving licence and in case, if the driving licence was found forged and ineffective on the date of the accident, only then, the owner of the vehicle could have been made responsible for the payment of the amount of compensation, otherwise not. The Appellant at the stage of the appeal has filed the original copy of the driving licence of the driver and it has not been controverted by the Insurance Company, as yet. I am, therefore, of the view that the owner in this case could not have been made liable for making the payment of the amount of compensation at all. It is the primus liability of the Insurance Company to pay the amount of compensation as all other papers as well as the driving licence were photo copies and they have not been controverted by the Insurance Company. The finding recorded by the Tribunal is liable to be set aside and I am of the view that the Insurance Company is liable to pay the amount of compensation in this case.

12. As far as the amount of compensation to be awarded in favour of the claimants is concerned, the Tribunal while deciding issue No. 5 has discussed this aspect but the approach adopted by the Tribunal in adopting the multiplier appears to be wrong. The Tribunal although has assessed the annual income of the deceased as well as the financial dependency of the claimants in a right manner and that finding does not require any interference.

13. However, the age of the deceased at the time of the accident was 50 years as is evident from the record and at this age group, the multiplier could not travel more than ''8'' in any manner, in view of the judgment of the Hon''ble Apex court in The New India Assurance Company Ltd. v. Smt. Kalpana and Ors. reported in (2007) 2 SCC (Cri) 94, T.N. State Transport Corporation v. S. Rajapriya and Ors. reported in (2005) 6 SCC 276 and The Managing Director, TNSTC v. Sripriya and Ors. reported in 2007 (5) Supreme 301 and after adopting the multiplier of ''8'', the amount of compensation comes to Rs. 5,28,000/- (66000 X 8) instead of Rs. 7,26,000/- as has been awarded by the Tribunal in the impugned judgment and award.

14. As far as the rate of interest is concerned, the Tribunal again fell in error in awarding the conditional compound interest of 9%, which does not appear to be proper. I am of the view that the claimants are entitled for an interest of 6% per annum on the awarded amount from the date of filing the claim petition till the date of actual payment.

15. For the reasons recorded above, the appeal is partly allowed. The impugned judgment and award is modified upto the extent that, the claimants are entitled for a sum of Rs. 5,28,000/- instead of Rs. 7,26,000/- as has been awarded by

the Tribunal along with interest @ 6% per annum from the date of filing the claim petition till the date of actual payment.

16. As I have already observed in the body of the judgment that the amount of compensation is to be paid by the insurer of the vehicle i.e. National Insurance Company Ltd. to the claimants instead of the Appellant/owner of the bus as has been directed by the Tribunal.

17. The statutory amount deposited by the Appellant before this Court be remitted to the Tribunal concerned.

