

(2011) 05 UK CK 0126
In the Uttarakhand High Court
Case No : A.O. No. 458 of 2008

Deep Kishor Singh Rana @ Deepak Singh Rana	APPELLANT
Vs	
Naveen Badoni and Others	RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 2 UC 1245

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short the Act) is directed against the judgment and award dated 4-10-2008 passed by the Motor Accident Claims Tribunal/District Judge, Tehri Garhwal (for short the Tribunal) in Motor Accident Claim Case No. 18 of 2006, Deep Kishore Singh Rana @ Deepak Singh Rana v. Naveen Badoni and Ors., whereby the learned Tribunal has awarded a compensation of Rs. 25000/- to the Appellant-claimant, as mentioned in the impugned award. The Appellant-claimant has filed the appeal for enhancement of the compensation.

2. Brief facts, giving rise to the present appeal, are that the Appellant-claimant filed a claim petition before the Tribunal alleging therein that on 13-2-2006, he was travelling by Mahindra Maxx Jeep No. UA 07H-1578 from place Bagi (Tehri) to his village Thela. At about 10.30 p.m. on Moolgarh-Tharti motor road near Mahargaon, within Patwari Circle Holta, Nailchami, Tehsil Ghansali, due to rash and negligent driving by the driver of the said vehicle, the jeep rolled down into a deep gorge with the result the claimant suffered grievous injuries on different parts of his body and became unconscious. The claimant was brought to C.M.I. Hospital Dehradun and was admitted there for treatment. The claimant was kept in I.C.U. for eight days. According to the claimant, he had incurred huge amount on different counts as detailed in the claim petition. The claimant was also

incapacitated to do his job of Project Coordinator in Vardan N.G.O. for a period of two years and suffered loss of income of Rs. 1,92,000/-. The claimant has filed the claim petition for compensation of Rs. 6,72,300/-, which included an amount of Rs. 2,00,000/- incurred by the claimant towards medical expenses. It has been alleged that the illfated vehicle was owned by Mr. Navin Badoni and the same was insured with the Oriental Insurance Company Ltd. The illfated vehicle was being driven by driver Rajendra Singh Panwar.

3. The owner of the vehicle-O.P. No. 1 resisted the claim petition by filing his written statement asserting therein that he is the owner of the vehicle in question and the vehicle No. UA 07H-1578 was duly insured with the Oriental Insurance Company at the time of accident. It was also asserted that the vehicle was being driven by Rajendra Singh, who was having a valid driving licence and the accident occurred due to mechanical failure in the vehicle and that there was no rash and negligence on the part of the driver. The insurance company is liable to pay compensation, if any. It was also asserted that the driver of the vehicle was not arrayed as opposite party. The petition is bad for non-joinder of necessary party.

4. The O.P. No. 2 Insurance Company also filed its written statement and has shown ignorance of the fact of accident. It was asserted that the claim preferred is exorbitant and without any basis. The driver of the vehicle was not having a valid driving licence and the owner was not having valid papers of the vehicle and the vehicle was being plied in violation of policy conditions.

5. The driver of the vehicle was arrayed as O.P. No. 3 by way of amendment, but has not contested the claim petition. The claim petition proceeded ex parte against him.

6. The learned Tribunal framed the following issues in the case:

ISSUES

1. Whether the accident in question took place at about 10.30 p.m. on 13-2-2006 near Mahargaon on Moolgarh-Thati motor road Patwari Circle Holta Nailchami, Tahsil Ghansali of this district due to rash and negligent driving of Mahindra Maxx No. UA07H/1578 by its driver causing injuries to Sri Deep Kishore Singh Rana @ Deepak Singh Rana as alleged?

2. Whether on the date of alleged accident the driver of the vehicle in question was not duly licensed and the owner did not possess valid permit and fitness as alleged by O.P. No. 2 the insurance company in para No. 8 and 10 respectively of its WS? In any case, its effect?

3. To what amount of compensation is the Petitioner entitled and from which of the opposite parties?

7. In support of his claim, the Appellant-claimant filed copy of family register, copy of first information report, copy of injury report and bills of medical

expenses etc. towards documentary evidence and has examined himself as P.W. 1 and Digambar Singh as P.W. 2 in oral evidence.

8. On the other hand, O.P. No. 1 owner of the vehicle has filed registration certificate, insurance, driving licence of the driver, letter of insurance company and inspection report. O.P. No. 2-Insurance Company and O.P. No. 3 did not adduce any evidence in the case.

9. The learned Tribunal after hearing both the parties took Issue No. 1 on the point of rash and negligent driving by the driver for decision. The learned Tribunal after perusing the evidence on record has come to the conclusion that the motor accident occurred due to rash and negligent driving by the driver of the vehicle with the result the claimant suffered grievous injuries on his person. On Issue No. 2, it was held that the owner of the vehicle was having valid documents of the vehicle including valid driving licence of the driver. On issue No. 3, which is on the point of quantum of compensation, the learned Tribunal has observed that the claimant has filed medical expenses bills but they have not been properly certified and proved. The learned Tribunal has further observed that the claimant was unable to do his job on account of injuries suffered by him from 13-2-2006 and a certificate was filed from the employer showing that the claimant had worked from 1-4-2005 to 12-2-2006 but this certificate too was not proved. The medical prescription issued by the doctor was filed but the medical expenses bills were not duly verified by the doctor. Ultimately, the learned Tribunal has declined to award compensation on the basis of the medical expenses bills, which were not duly proved as per law. The learned Tribunal has ultimately awarded compensation of Rs. 15,000/- towards medical treatment besides an amount of Rs. 5,000/- towards physical and mental agony and an amount of Rs. 5,000/- towards travelling expenses with a total compensation of Rs. 25,000/-. The learned Tribunal has held that since the vehicle was duly insured with the Oriental Insurance Company and the owner was having valid papers, therefore, the responsibility to pay compensation was fastened on the Insurance Company. The learned Tribunal by the impugned award dated 4-10-2008 has directed the insurance company to pay compensation amounting to Rs. 25,000/- within a period of two months. If the compensation is not paid within two months, the claimant shall be entitled to interest @ 8% per annum from the date of claim petition till payment, which gave rise to the present appeal.

10. In this appeal it has been contended that the learned Tribunal has erred in not awarding the amount of Rs. 2,00,000/- incurred on the treatment of the claimant when he remained in I.C.U. for eight days. The learned Tribunal also erred in not awarding the compensation towards loss of income for about two years. It has also been contended that the amount of compensation assessed is on the lower side.

11. I have heard learned Counsel for the parties and perused the lower Court record including the impugned award.

12. At the outset, it may be mentioned here that none of the Respondents in this appeal has assailed the impugned award either by way of separate appeal or by filing cross-objection in the present appeal. It is also pertinent to note that the claimant-Appellant has not challenged the findings of the learned Tribunal recorded on Issue Nos. 1 and 2. That being so, the findings recorded by the learned Tribunal on Issue Nos. 1 and 2 have become final.

13. The short controversy to be resolved in this appeal is whether the findings recorded by the learned Tribunal on Issue No. 3 are erroneous or not?

14. I have perused the original record of the learned Tribunal. Before the Tribunal, a number of documents were filed on behalf of the claimants on 21-12-2006 along with an application (paper No. 25-C) for permission of the tribunal to take the documents on record. The order-sheet does not disclose as to how and when the application paper No. 25-C had been disposed of by the learned Tribunal. It also appears that no endorsement regarding admission and denial as to the genuineness of the documents had been obtained from the opposite parties or their counsel before the Tribunal on any date after 21-12-2006.

15. The learned Tribunal while deciding Issue No. 3 in the very first paragraph has observed that the medical bills were filed by the claimant-Appellant per list 7-C, but they are not properly verified and proved. This observation by the learned Tribunal is erroneous on the face of record. As mentioned above, the claimant has filed medical bills on 21-12-2006 per list 26-C, which contained as many as 62 documents including medical expenses bills. These documents were accompanied by an application 25-C, which has been moved for permission to take those documents on record. The record of the learned Tribunal does not disclose that this application paper No. 25-C had ever been disposed of and that opportunity was given to the other party to file papers in rebuttal. In this view of the matter, it cannot be said that the approach of the learned Tribunal in deciding Issue No. 3 was justified and proper. The claimant should have been made fully aware that the documents filed by him had been taken on record by the learned Tribunal and that the application moved in that behalf also stood disposed of by order of the Tribunal. But in the case at hand, the learned Tribunal lost sight of the fact that a large number of documents including the medical bills were filed per list 26-C. I am also of the view that the learned Tribunal shall obtain admission and denial on the documents so filed by the claimant per list 26-C and only those documents the genuineness of which is not admitted by the opposite parties would require formal proof by oral evidence.

16. In the above facts and circumstances, I am of the view that the finding recorded by the learned Tribunal on Issue No. 3 is not tenable in so far as it relates to medical expenses bills filed by the claimant-Appellant per list 26-C. However, the findings recorded on Issue Nos. 1 and 2 are liable to be upheld. Accordingly, the impugned award dated 4-10-2008 is liable to be set aside and it is a fit case to remand the matter to the learned Tribunal for decision afresh on

Issue No. 3. The appeal, therefore, deserves to be allowed.

17. The appeal is allowed with no order as to costs. The finding recorded by the learned Tribunal on Issue No. 3 is set aside. The findings of the Tribunal on Issue Nos. 1 and 2 are upheld. The impugned award dated 4-10-2008 is set aside accordingly. The case is remanded to the learned Tribunal for deciding Issue No. 3 afresh in the light of the observations made in the body of the judgment. The learned Tribunal shall afford reasonable opportunity to the claimant-Appellant to prove the medical expenses bills already filed on record.