
(2007) 12 UK CK 0011
In the Uttarakhand High Court
Case No : A.O. No. 353 of 2006

Deeraj Kumar @ Nittu

APPELLANT

Vs

United India Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) 8 UC 684

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Pramod Tiwari, for the Appellant; Naresh Pant and Manish Arora, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 20-03-2006, passed by the Motor Accident Claim Tribunal/1st F.T.C./Addl. District Judge Roorkee, District Haridwar in M.A.C. Case No. 80 of 2004 whereby the claim of the claimant was rejected.

2. The Appellant/claimant, Dheeraj Kumar had filed a claim petition u/s 166 of Motor Vehicles Act for compensation of Rs. 15,30,000/- before the Tribunal alleging therein that on 06-06-2004 at about 11:30 p.m. he was coming from Dahiyaki to his village Liberhedi alongwith Dharmendra Kumar of his village in Maruti Car No. UGX-8485. When they reached near Uttam Sugar Mill, a Truck bearing No. U.P. 12A-2151, being driven by its driver rashly and negligently, dashed the Maruti Car resulting multiple injuries on the person of Dharmender Kumar and the Appellant/claimant. Dharmender Kumar succumbed to his injuries. The Appellant/claimant-Dheeraj Kumar also sustained the multiple injuries on his person. The claimant-Dheeraj Kumar was admitted to Nursing Home, Muzzafarnagar from 08-06-2004 to 18-06-2004 and incurred a sum of Rs. 70,000/- towards his treatment. It was further alleged that the claimant-Dheeraj Kumar was 28 years of age at the time of accident and was earning a sum of Rs.

4,000/- per month from agricultural farms.

3. The Respondents contested the claim petition and filed their separate written statements. The Respondent No. 1 - Insurance Company, in its written statement has not admitted the claim petition for want of knowledge but admitted that the truck was insured with it; the claim petition was not maintainable, as the Appellant/claimant has not impleaded the owner and driver of the Maruti Car; and the accident occurred due to rash and negligent driving of the Maruti Car. It was further pleaded that at the time of accident, the truck was driven against the policy condition. The Respondent No. 1 Arvind Kumar, owner of the truck pleaded in his written statement that the driver of the Maruti Car was rash and negligent at the time of the accident and as such, the said car was responsible for the accident. It was also pleaded that the claimant has not impleaded the owner and driver of the Maruti car. It was also pleaded that the driver of the truck was holding valid documents at the time of the accident and the truck was insured with the Insurance company, as such, the insurance company, is liable to pay the compensation, if any.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the necessary issues.

5. After recording the evidence and hearing the parties, the learned Tribunal held that it was not established that the claimant sustained injuries due to rash and negligent driving of the truck rather it was established that the accident occurred due to rash and negligent driving of the Maruti Car and the claimant has not impleaded the owner and the insurer of the Maruti Car in the claim petition. At last, it was held that the claimant is not entitled to receive any compensation.

6. Feeling aggrieved by the award, the claimant has filed this appeal before this Court.

7. Heard Shri Pramod Tiwari, Advocate for the Appellant; Mr. Naresh Pant, Advocate for Respondent No. 1; Mr. Manish Arora, Advocate for Respondent No. 2 and perused the record.

8. Learned Counsel for the Appellant/claimant contended that the learned Tribunal has erred in holding that the Appellant/claimant was not entitled for any compensation under the Motor Vehicles Act; the accident occurred due to the negligence of the Appellant/claimant himself; and the truck bearing No. U.P. 12A-2151 was not rash and negligent at the time of the accident. It was further contended that the Tribunal has erred in holding that the truck was on extreme left side and in spite of that the Appellant hit his Maruti Car with the truck. Learned Counsel for the Respondents supported the judgment of the learned Tribunal.

9. The Appellant/claimant in support of its claim petition adduced the evidence of the Appellant himself as PW1 who has stated in his evidence that on 06-06-2004 at about 11:30 p.m. he was driving the Maruti Car UGX-8485 and was coming

from Dahiyaki to his village Libberhedi. When his Maruti Car reached at Uttam Sugar Mill, a truck bearing No. UP12A-2151 coming from the opposite side rashly and negligently dashed the car. It was further stated that the driver took his truck on the wrong side due to which the accident took place and the person sitting on the left side of the Appellant/driver Dharmender Kumar Rathi succumbed to his injuries at the spot. The Appellant/claimant also sustained multiple injuries on his person.

10. The Respondent No. 1 - Insurance Company adduced the evidence of Parvez DW1 who was driving the truck bearing No. UP12A-2151. He has stated in his evidence that the truck was going from Biharigarh to Muzzafarnagar and it was loaded with stones. He was driving the said truck at a speed of 25 kms. per hour on his side. He has further stated that the driver of the Maruti Car coming from opposite side was rash and negligent. The said Maruti Car tried to overtake a bus of Transport Corporation and the speed of Maruti Car was about 80-85 kms. per hour. When he saw the Maruti Car coming from the opposite direction on a high speed, he took his truck on the kachha side of this road on his extreme left. At that time he was driving the said truck at a speed of about 15 kms. per hour. The driver of the Maruti Car after coming to its extreme wrong side hit the truck. The said accident occurred due to rash and negligent driving and overtaking by the Maruti Car. He was not responsible for the said accident.

11. The accident occurred at about 11:30 p.m. on 06-06-2004 and the Appellant/claimant, driver of the Maruti Car was medically examined at about 1 a.m. in the same night. The doctor has opined that the claimant had consumed the liquor and there was smell of alcohol on his breath. He was conscious and was talking irrelevant. This fact clearly reveals that the Appellant/claimant had consumed the liquor and he was driving the car under the influence of liquor. It is also pertinent to mention here that though he was conscious but he was taking irrelevant. Thus, this fact leads to take an inference that the Appellant/claimant himself was not in a position to understand the things rightly at the spot and it cannot be said that he was not rash and negligent at the time of accident. It can be concluded by the above fact that the driver of the Maruti Car, i.e., Appellant/claimant was driving the vehicle rashly and negligently. While overtaking the said bus, the Appellant/claimant went to his extreme right side due to which it hit the truck. This fact of overtaking of bus had not been denied by the Appellant/claimant. There is no effective cross examination of the driver of the truck on this point. It is established that the driver of the Maruti Car was overtaking the transport corporation bus knowingly when the truck No. U.P. 12A-2151 was coming from the opposite direction and in addition to that the Appellant/claimant was under the influence of liquor. This fact also leads to take inference that the driver of the Maruti Car was rash and negligent at that time. It is also pertinent to mention here that the site plan which has been filed by the Appellant/claimant clearly shows that the said truck was standing on its extreme left side and Maruti car is standing in the middle of the road. This fact has been seen by the Investigating Officer. The Maruti Car is standing at point A and the truck was standing at point

B. The fact, which the Investigating Officer has seen by his eyes, is only admissible evidence. If the accident would have occurred as stated by the Appellant/claimant, the Maruti Car would have gone to its extreme left side of the road and the truck would have been standing on its right side. As a matter of fact, the Maruti Car was found standing on the middle of the road. It is not the case of the parties that after the accident, the truck was taken to the place where the truck was standing at the time of inspection. Contra to this, the report reveals that the truck driver fled away from the spot. Thus, the eyewitness can speak lie but not the circumstances. The position of the vehicle shown in the site plan clearly reveals that the truck driver was not negligent at the time of accident.

12. In view of the above, we do not find any fault in the approach of the learned Tribunal in holding that the driver of the truck was not rash and negligent at the time of the accident. The driver of the Maruti Car, i.e. Appellant/claimant was rash and negligent who hit the truck. Since, the owner of the Maruti Car and Insurer of the Car have not been arrayed as parties in the petition; the Appellant/claimant is not entitled to get any compensation from the insurer or the insured of the truck.

13. In view of the above the appeal is liable to be dismissed and is hereby dismissed accordingly.

14. No order as to costs.