(2008) 12 UK CK 0002

In the Uttarakhand High Court

Case No : Appeal From Order No. 334 of 2005

Devi Chand Pursaura APPELLANT

Vs

The New India Assurance Company Ltd. and Others RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 12 UK CK 0002

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

Bench : Single Bench

Advocate : R.C. Joshi, holding brief of Rajendra Kotiyal, for the Appellant; M.K. Goyal and B.S. Negi, for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, has been preferred by the Appellant i.e. owner of vehicle i.e. Truck No. U.P.08-2574, against the judgment and award dated 21st June, 2005 passed by Motor Accident Claims Tribunal, Uttarkashi, in M.A.C.C. No. 20 of 2004, Smt. Anita and Ors. v. Devi Chand Pursaura and Anr.

2. Briefly stated the facts, according to the claimants, are that deceased-Barfiya Lal was employed as driver on Truck No. U.P.08-2574. On 23.6.2004 at 8.00 p.m. when deceased was going to sleep in his room by driving the truck carefully after unloading goods, the said truck collided towards hill due to sudden mechanical defects in it, as a result of which Barfiya Lal died in this accident. The deceased had been earning a sum of Rs. 50007- per month and out of it he used to give a sum of Rs. 3000/- to his family. The deceased was 34 years of age at the time of accident. The claimants claimed a sum of Rs. 22,04,000/- as compensation along with interest of 12% per annum against the opposite parties jointly and severally.

3. Opposite party No. 1 i.e. owner of Truck No. U.P.08-2574 filed his written statement denying the contents of the claim petition for want of knowledge. In

the additional pleas, it has been stated that answering Respondent is the registered owner of Truck No. U.P.08-2574 and deceased-Barfiya Lal was the driver on the said vehicle. It has also been stated that on 23.6.2006 truck in question met with an accident, in which deceased-Barfiya Lal died at the spot itself. It has further been stated that on the date of accident vehicle in question was insured with opposite party No. 2, which policy was valid upto 17.8.2004. Therefore, insurance company is liable to pay the compensation. It has also been stated that on the date of accident deceased-Barfiya Lal was having valid driving licence, which was valid w.e.f. 23.9.2002 to 22.9.2005.

4. Opposite party No. 2 - The New India Assurance Company Ltd. filed its written statement denying the contents of claim petition for want of knowledge. It has been stated that claim petition has been filed by the claimants on wrong and imaginary grounds and answering Respondent is not liable pay any compensation. In the additional pleas, it has been stated that driver was not having valid and effective driving licence to drive the alleged vehicle in hill routes as well as he has not having valid registration certificate. The claim petition has been filed by the claimants in collusion with owner of vehicle in question. The claimants have stated the income of the deceased wrongly and excessively and the claim petition was not maintainable. It has also been stated that alleged accident had occurred due to technical fault in the vehicle, therefore, insurance company is not liable to pay compensation for accident which took place due to technical fault in the vehicle.

5. The learned Tribunal on the basis of pleadings adduced by the parties framed relevant issues in the claim petition, which were discussed in detail. Parties led evidence in support of their case.

6. The learned Tribunal after having considered the entire evidence available on record and hearing learned Counsel for the parties, decreed the claim petition for a sum of Rs. 1,87,000/-, against opposite party No. 1-Devi Chand Pursaura (owner of vehicle in question), along with interest of 6% per annum from the date of filing the petition till the date of actual payment, vide judgment and award dated 21.06.2005.

7. Feeling aggrieved by the aforesaid impugned judgment and award, the Appellant i.e. owner of vehicle in question has preferred the present appeal before this Court.

8. Heard Sri R.C. Joshi, Advocate holding brief of Sri Rajendra Kotiyal, learned Counsel for Appellant, Sri M.K. Goyal, learned Counsel for Respondent No. 1, Sri B.S. Negi, learned Counsel for Respondents No. 2 to 4 and perused the record.

9. Learned Counsel for the Appellant has confined his argument towards this aspect of the matter that the learned Tribunal has wrongly shifted the burden on the shoulder of the owner of vehicle for payment of amount of compensation.

10. The record shows that owner of vehicle in question has taken stand in his

written statement that accident had taken place on account of sudden technical fault in the vehicle. The F.I.R. lodged with respect to this accident also reveals that accident alleged to have been caused due to technical fault in the vehicle. In these circumstances, the burden to prove this fact was upon the owner of vehicle that he had taken all necessary precautions and vehicle was fit for being plied on road and this accident had occurred inspite of being taken necessary precautions. The owner of vehicle has also to prove that technical fault by which accident had occurred, detected in the vehicle suddenly and before that it could not be detected inspite of proper maintenance of vehicle and in that situation owner of vehicle cannot be held to be liable. The burden of proof of this fact is upon the owner of vehicle that this accident had taken place due to technical fault. In the present case, owner of vehicle has not filed fitness certificate of vehicle in question. The owner of vehicle did not adduce any evidence which may indicate that he had taken all precautions for proper maintenance of the vehicle before plying the vehicle on road. Merely statement of owner of vehicle in his written statement that accident had occurred due to technical fault in the vehicle cannot be deemed to be sufficient.

11. The Tribunal after having assessed the entire evidence available on record came to the conclusion that vehicle in question has not been maintained properly by the owner of vehicle before plying it on the road, therefore, in these circumstances, insurer of vehicle in question cannot be held liable to pay the amount of compensation. I also find myself in total agreement with the findings recorded by the Tribunal in this regard and I do not find any reason to disturb the same.

12. No other point has been pressed.

13. For the reasons stated above, the appeal lacks merit and is liable to be dismissed.

14. The appeal is accordingly dismissed. The impugned judgment and award dated 21.06.2005, is confirmed.

