

(2016) 12 UK CK 0002
In the Uttarakhand High Court
Case No : Appeal from Order No. 8 of 2009

Ganga Singh

APPELLANT

Vs

Smt. Chunni Devi

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 149(2), Section 166, Section 173

Citation : (2017) 1 ACC 803 : (2017) 153 FLR 105 : (2017) 1 TAC 378

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : None present on behalf of the claimants, for the Claimants; Mr. Deepak Rawat, Advocate, for the Respondent No. 5; Mr. I.P. Kohli, Advocate holding brief of Mr. Lalit Sharma, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J. - The judgment rendered on 16.10.2008 by the learned Tribunal is impugned before this Court. In brief, the facts are that a labourer youth namely Shri Rikhai Prajapati, aged 22 years, lost his life during the course of his employment on dumper Truck No. UA 04C-7387. He along with some other labourers was engaged in loading and unloading of the sand in such dumper. On 17.12.2007, at 5:00 PM, he and his fellow companions, after loading the sand in such dumper, were returning while seated in the rear portion of the vehicle. Accidentally the dumper for some reason overturned and the labourers suffered the serious injuries. At some point of time, Shri Rikhai Prajapati succumbed to the injuries.

2. His young wife along with posthumous child Master Deepak and parents instituted the Claim Petition No. 12 of 2008 before the learned Tribunal and learned Judge has awarded the compensation to the tune of Rs. 4,17,500/- along with interest at the rate of 6% per annum and Rs. 1,000/- as cost of the litigation on the premise that the deceased was gratuitous passenger in such truck and thus has fastened the liability to satisfy the award on the owner and

driver of the vehicle. Feeling disgruntled, they have come up in the appeal before this Court.

3. It is vehemently argued by the learned counsel of the appellants that the insurance policy of the truck was not only third party (basic) in nature, but also covered the compulsory personal accident to owner-cum-driver and most significantly, seven employees were covered under the Workmen's Compensation Act, where for a separate premium was paid to the insurer. Therefore, fastening liability upon them deeming the deceased as a gratuitous passenger was wholly infirm. The learned counsel of the appellant has relied upon the precedent of Hon''ble Apex Court in the case of State of H.P. and another v. Rajkumar and others 2006 (1) TAC 231 (H.P.) page 231, wherein it has been held as under:

It was held that where the deceased was an employee and died on the duty, liability to pay compensation in the Workmen's Compensation Act is absolute liability. The claimants may have exercised their option to get the compensation under the Motor Vehicles Act. However, once it is held that the petition was not maintainable under Section 166 of the Motor Vehicles Act since the claimants have failed to show that the respondents are negligent, the liability to pay the compensation under the Workmen's Compensation Act will not cease and the employer becomes liable to pay compensation as soon as the injury is caused to workman.

4. In yet another judgment of the Constitutional Bench of the Hon''ble Apex Court, in the case of National Insurance Co. Ltd. v. Prembai Patel and others (2005) 6 SCC 172, has observed as under:

It was held that Insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy where under the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso II) to Section 147 (1) (b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

5. On the other hand, learned counsel on behalf of the Insurance Company has relied upon the two precedents of Hon''ble Apex Court in the case of National Insurance Company Co. Ltd. v. Bommithi Subbhayamma and others, (2005) 12 SCC 243 and National Insurance Co. Ltd. v. Prema Devi & others, (2008) II ACC 1.

6. It has been stressed by the learned counsel of the Insurance Company that

the vehicle in question was "goods carriage" and not covered in the definition of "goods vehicle" as defined in the old Act. It was argued that a goods carriage could have been used only to carry the goods and not for any other purpose. Meaning thereby, it could not be permitted to carry even the labourers employed for loading and unloading of the goods.

7. I feel that such arguments is not acceptable for the simple reason that a dumper is not that kind of goods carriage, which could be made functional without permitting the labourer for loading and unloading the sand and more so where the owner of the dumper has specifically and separately paid the premium for the workmen of such nature up to seven in number. If the insurer did not have any intention to insure the workman of such nature, then there was no propriety to charge the separate/distinct premium specifically for the purpose. In addition to, the premium of the basic third party and the compulsory personal accident cover to owner-cum-driver was also paid. Once the insurer has accepted the distinct premium specifically for a particular purpose, then I think it can not abstain from accepting to satisfy the award.

8. In the circumstances as have been highlighted during the course of the evidence of PW2 (labourer Mr. Jai Prakash Yadav), it is evident that all these labourers were not the gratuitous passengers, but they were the workmen of the dumper owner and travelling at the relevant time sitting on such dumper. Therefore, I shift the liability to pay the whole award/compensation on the insurance company and on this score, the liability fastened upon the appellants is hereby set aside.

9. Now, the question arises, what amount of compensation, the claimants are entitled to Since they are workmen, hence the calculation of such award should also be in accordance with the Workmen's Compensation Act. Having done so as per Section 4 of the Act, 50% of the monthly income of the deceased comes to Rs. 1,500/- and applying the relevant factor 221.37 to multiply it, the amount comes to Rs. 3,20,055/-. The insurance company shall be liable to pay only this much amount along with 6% interest and the litigation expenses as awarded by the learned Tribunal.

10. On the score of the quantum, the award stands modified to the extent above and it will carry the same rate of interest from the date of institution of the petition.

11. The amount deposited by the appellant shall be returned along with the interest it has earned. On execution set out by the claimants, the insurance company shall be liable to pay the above compensation.

Appeal stands allowed in above terms.

Let the lower court record be sent back.