(2019) 09 UK CK 0218

In the Uttarakhand High Court

Case No : Appeal From Order No. 172 Of 2015

H.D.F.C. ERGO General Insurance Company Ltd	APPELLANT
Vs	
Kuldeep @ Hardeep And Others	RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0218

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Pramod Belwal, Lalit Miglani, Bharat Tiwari

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This appeal from order arises out of an Award dated 28.11.2014, passed by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar, in M.A.C.P. No. 434 of 2011, in which the learned Tribunal has awarded a compensation of Rs. 1,99,661/- (Rupees One Lakh Ninety Thousand Six Hundred Sixty One only) along with an interest at the rate of nine per cent per annum from the date of filing of the claim petition.

2. Brief facts of the case are that on 14.08.2011 at about 05:15 the claimant was coming from the side of Afjalgarh towards Kashipur on his motor cycle, with his nephew Lakhvinder Singh as pillion rider. As soon as he reached near "Fika" bridge at Jaspur, a Tata Safari bearing registration no. DL 3 CBN-1420, which was coming from the opposite side and which was being driven rashly and negligently by its driver, dashed on to the motor cycle of the claimant. As a result of the accident the claimant sustained grievous injuries. In the said accident, the nephew of the claimant who was sitting as pillion rider had also sustained grievous injuries in the said accident and died due to the injuries. There was another casualty also to this accident. The claimant was taken to Prashant Nursing Home, where he remained admitted from 14.08.2011 till 27.08.2011.

3. A claim petition was filed by the claimant stating that due to accident his right leg got fractured at several places, and so did his hip. He was operated and a steel rod was implanted in his right leg. The claimant has spent more than Rs. 2,00,000/- (Rupees Two Lakhs) on medical treatment and the treatment is still going on. A compensation of Rs. 2,00,000/-(Rupees Two Lakh only) was been claimed by the injured/claimant on account of injuries sustained in motor accident.

4. The learned Tribunal after considering each and every aspect of the matter awarded a compensation of Rs. 1,99,661/- (Rupees One Lakh Ninety Thousand Six Hundred Sixty One only) along with an interest at the rate of nine per cent per annum from the date of filing of the claim petition. The learned Tribunal came to the conclusion that on the date of accident, though the registration certificate and the insurance of the offending vehicle were valid, but the driver of the offending vehicle was not having a valid driving licence. Therefore, though the Tribunal directed the insurance company to pay the amount of compensation to the claimant, but a liberty was given to the insurance company to recover the amount of compensation from the owner of the offending vehicle.

5. Aggrieved, the insurance company has filed the present appeal.

6. In the same accident which occurred on 14.08.2011, one Mithilesh Devi also sustained grievous injuries and died due to the injuries received by her. A claim petition being M.A.C.P. No. 313 of 2011 was filed by the legal heirs of Mithilesh Devi before the Claims Tribunal, in which the Tribunal vide judgment and order dated 28.11.2014 awarded a compensation of Rs. 5,57,000/- (Rupees Five Lakh Fifty Seven Thousand only). The judgment and order dated 28.11.2014 passed in M.A.C.P. No. 313 of 2011 was challenged by the insurance company before this Court by means of A.O. No. 171 of 2015 on ground that since there was a finding by the Tribunal that the driver of the offending vehicle was not having valid driving licence, the entire liability ought to have been fixed on the driver or the owner, however, the Tribunal has fixed the liability on the insurance company with liberty to recover the same from the owner of the offending vehicle. This Court vide order dated 23.09.2019 has dismissed the appeal filed by the insurance company being A.O. No. 171 of 2015.

7. Since, this case is also based on similar set of pleadings, this appeal is also dismissed in the same terms as observed in Appeal from Order No. 171 of 2015.

8. Let the entire amount be deposited by the insurance company with the concerned Tribunal along with nine per interest from the date of filing of the claim petition, within a period of three weeks from the date of production of a certified copy of this order, after adjusting the amount already paid. Let the statutory amount of Rs. 25,000/- (Rupees Twenty Five Thousand) be also remitted to the concerned Tribunal. After the amount is deposited by the insurance company, let the same be released in favour of the claimant forthwith.

9. Let a copy of this judgment along with lower court record be sent to the

concerned Tribunal for onward compliance.