
(2006) 11 UK CK 0020

In the Uttarakhand High Court

Case No : Appeal from Order No. 497 of 2003

Jagat Singh and Another

APPELLANT

Vs

Sri Niranjana Singh and Another

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 3 UC 1372

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

Bench : Division Bench

Advocate : B.S. Khanka, for the Appellant; D.S. Patni, 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 25.09.2003, passed by the Motor Accident Claim Tribunal/Addl. District Judge/III Fast Track Court, Udham Singh Nagar in M.A.C. Case No. 167 of 2002 whereby the claim of the claimants was rejected.

2. The claimants, Jagat Singh and Smt. Hira Devi had filed a claim petition for compensation of Rs. 4,55,000/- before the Tribunal alleging therein that on 27-05-2002 at about 4:00 p.m. when the claimant-Jagat Singh was sitting as a pillion rider with his maternal brother and coming from Khatima to Ratanpur in scooter bearing No. U.P.-04/B-8584, an offending truck bearing No. UP. 04A/0329, which was coming from Sitarganj rashly and negligently, hit the scooter resulting in grievous injuries to the claimant-Jagat Singh in his leg. The claimant-Jagat Singh was admitted to the Public Health Centre, Khatima and thereafter he was referred to Pilibhit for further treatment. It is alleged that the claimant-Jagat Singh was 33 years of age. The claimant-Jagat Singh was earning Rs. 5,000/- from his dairy business and agricultural farms at the time of accident.

3. The Respondents contested the claim petition and filed their separate written statements. The Respondent No. 1-Niranjana Singh, in his statement admitted the

accident and alleged that the accident occurred due to the negligence of the scooterist. He had pleaded that the accident occurred due to rash and negligent driving of the scooterist as the Claimant-Jagat Singh, pillion rider and Vikram Singh-scooterist were in a drunken condition. It was further pleaded that the offending truck was insured with United India Insurance Company Limited on the date of accident. The Respondent No. 2-United India Insurance Company Limited had pleaded in its written statement that the claimant had not impleaded Vikram Singh-who was the owner of the scooter in the claim petition. It was further alleged that the insurance company is not liable to pay the compensation as the offending vehicle was being plied against the condition of the policy.

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

5. After recoding the evidence and hearing the parties, the learned Tribunal held that it was not established that the claimant-Jagat Singh sustained injuries due to rash and negligent driving of the offending truck. It was further held by the Tribunal that the accident occurred due to rash and negligent driving of the scooterist. At last, it was held that the claimants are not entitled to receive any compensation.

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

7. Heard Shri B.S. Khanka, learned Counsel for the Appellants; Shri Manish Dalakoti-Advocate on behalf of Sri D.S. Patni-Advocate for the Respondent No. 2 and perused the record.

8. Learned Counsel for the Appellant contended that the Tribunal fell in error in holding that the claimant/Jagat Singh could not establish the fact that the driver of the offending truck was rash and negligent at the time of accident. It was further contended that the learned Tribunal had erred in holding that the accident occurred due to the rash and negligent driving of the scooterist in which the claimant/Jagat Singh was sitting as a pillion rider. Learned Counsel for the Respondents refuted the contention and contended that the accident occurred due to rash and negligent driving of the scooterist as the scooterist-Vikram Singh and the claimant-Jagat Singh were heavily drunken. It was further contended that the claimant-Jagat Singh and the scooterist-Vikram Singh were rash and negligent and were liable for the accident.

9. Perusal of the record reveals that the claimant-Jagat Singh had examined himself as P. W. 1 and Sri Prem Singh-PW.2 in support of his claim. Jagat Singh is the claimant himself who had deposed in his deposition that the driver of the offending truck was rash and negligent at the time of the accident. He had further denied during the cross examination that he was under the influence of liquor and the scooterist-Vikram Singh was rash and negligent at the time of the accident. He had admitted in his cross examination that he was having a bottle of liquor in his hand at the time of the accident and due to breakage of bottle at the

time of the accident, the entire liquor fell in his body from where the clothes were giving the alcoholic smell. Prem Singh-P.W.2 had stated that he is the brother of the claimant-Jagat Singh. He is not the eyewitness of the accident. He had admitted in his cross-examination that he reached at the spot after half an hour of the accident. He had further deposed in his cross examination that he inquired about the accident from the scooterist-Vikram Singh who was sitting in the hospital with the claimant-Jagat Singh. Vikram Singh, the scooterist informed him that the accident occurred due to the rash and negligent driving of the vehicle. Thus Prem Singh-P.W.2 had not given the direct version of the accident. His evidence is based on hearsay evidence which is not admissible. The claimant-Jagat Singh had not examined Vikram Singh-Scooterist in support of his claim. The Respondents had examined Jasvinder Singh-DW, Mukhtiyar Singh DW 2 and Niranjana Singh DW 3 in their support who had claimed that they had seen the aforesaid accident. These witnesses had stated that the scooterist-Vikram Singh was driving the said scooter under the influence of liquor. It was further deposed that Vikram Singh, the driver of the scooter was driving the scooter rashly and negligently under the influence of liquor. They had further deposed in their evidence that Vikram Singh and claimant-Jagat Singh had also a bottle of liquor in their possession at the time of the accident. All the witnesses were cross examined at length but nothing could be elicited from their cross examination. Hence their evidence cannot be discarded.

10. It is also admitted by the claimant-Jagat Singh that after the accident both the injured namely, Vikram Singh and Jagat Singh Claimant were immediately shifted to the nearby hospital where they were medically examined and found that both the injured were under the influence of liquor. The Doctor had opined that both the injured were having the smell of liquor from their mouth and breathing. The Doctor had further opined that they were heavily drunken. The medical of Vikram Singh and Jagat Singh was conducted on 27-05-2002 immediately after the accident on the same day. Thus the medical evidence further corroborates the evidence of the Respondents. The medical certificate produced by the claimant-Jagat Singh falsifies the evidence of the claimant-Jagat Singh that the injured were not under the heavy influence of alcohol at the time of the accident. The manner in which the accident is said to have been taken place does not leave any room for doubt about the negligence of the scooterist-Vikram Singh which led to the accident resulting severe injuries on the persons of the Claimant-Jagat Singh and scooterist-Vikram Singh.

11. We, therefore, do not find any infirmity in the findings recorded by the learned Tribunal. The learned Tribunal was justified in holding that the driver of the offending truck was not rash and negligent at the time of the accident. The scooterist-Vikram Singh and the claimant-Jagat Singh were under the heavy influence of liquor and they were responsible for the accident. So the claimant-Jagat Singh is not entitled for any claim from the Respondents.

12. Learned Counsel for the Claimant-Jagat Singh further prayed that he may be

given liberty to file claim petition against the scooterist-Vikram Singh for the compensation. It is made clear that the Claimant-Jagat Singh will be at liberty to file the claim petition for the compensation against the scooterist-Vikram Singh.

13. In view of the above facts and circumstances, we are in agreement with the findings recorded by the learned Tribunal. The appeal filed by the Claimant-Jagat Singh devoirs of merit and is liable to be dismissed.

14. Accordingly, the appeal filed against the impugned award dated 25-09-2003, passed in M.A.C. case No. 167 of 2002 is hereby dismissed.

15. No order as to costs.