(2006) 03 UK CK 0006

In the Uttarakhand High Court

Jagat Singh Rawat APPELLANT

Vs

Motor Accident Claims Tribunal and Others RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 2 ACC 473 : (2006) 3 UC 1455 : (2006) 1 UD 693

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 16.8.1997. passed by M.A.C.T./District Judge, Pauri Garhwal in M.A.C. Case No. 3 of 1996, whereby the claim of the claimant was allowed for an amount of compensation to the tune of Rs. 1,25,000 and the appellant, owner of the vehicle, has been directed to pay the same.

2. Brief facts of the case, are that on 1.12.1995 at about 1.30 p.m., Smt. Anita Devi was travelling in Jeep registration No. U.P. 07-D/491 from Village Paubo to Notha. Said vehicle was being driven rashly and negligently by respondent No. 1, Jagat Singh, who was owner as well as driver of the said vehicle, resultantly, the vehicle fell in a gorge and Anita Devi died in the accident. She was aged 27 years a at the time of her death. Claimant No. 1, husband of the deceased and claimant Nos. 2, 3 and 4, minor children of the deceased filed claim petition alleging that the deceased was earning Rs. 1,000 per month for her family. It is also alleged in the claim petition that the vehicle was ensured with respondent No. 2, Oriental Insurance Co. Ltd. A sum of Rs. 8,92,000 was claimed by the claimants.

3. Respondent No. 1, owner and driver of the vehicle, filed his written statement admitting that the accident did take place but that was so due to some technical fault in the vehicle. He further pleaded, that the vehicle was ensured with the respondent Oriental Insurance Co. Ltd., at the time of the accident. Respondent

Oriental Insurance Co., filed its separate written statement and contested the claim alleging that the conditions of the policy were violated by the owner of the vehicle. It was further pleaded in the written statement that the owner of the vehicle was not having valid driving licence and registration certificate of the vehicle at the time of the accident. It was also pleaded that passengers were in excess of the limit allowed to take in the vehicle.

4. The Tribunal framed following issues, during the trial:

(1) Whether Smt. Anita Devi died in the accident?

(2) Whether correct age of Smt. Anita Devi is recorded in the claim petition?

(3) Whether Anita Devi was earning Rs. 1,000 per month, as alleged in the claim petition?

(4) Whether the vehicle registration No. UP 07-D/491 was being driven without valid papers, in violation of the terms of the policy, as alleged by respondent No. 2 in its written statement?

(5) To what amount of compensation the claimants are entitled and, if so, from whom?

5. After recording the evidence and hearing the parties, the Tribunal gave the findings that Smt. Anita Devi died in the accident while she was travelling in Jeep registration No. U.P. 07-D/491. It is also admitted fact between the parties, that appellant Jagat Singh was the owner and driver of the vehicle, at the time of the accident. As to the rash and negl igent driving on the part of the driver of the vehicle in question, there is uncontroverted evidence of. P.W. 2, Virender Singh, an eyewitness. As such, it is also established on the record that the vehicle was being driven rashly and negligently by the appellant Jagat Singh. Neither owner and driver, Jagat Singh nor the Insurance Co. adduced any evidence before the Tribunal against the aforesad evidence of P.W. 2, Virender Singh, as such, this Court has no hesitation in holding that the accident had occurred due to the rash and negligent driving on the part of the driver of the vehicle in question.

6. As to the fact, that the claimant No. 1, Bhag Singh Rawat was husband of the deceased and Balwant Singh, Sanjay Singh and Jai Singh were minor children of the deceased, pleas are not specifically denied in the written statements of the opposite parties, includingthe appellant. As such, statement of P.W. 1, Bhag Singh Rawat to this effect is rightly believed by the Tribunal and they have been rightly held to be entitled to the amount of compensation for the loss they have suffered. As far as quantum of amount of compensation is concerned, the deceased was a housewife aged 27 years, and in such a case the notional income has to be assumed to assess the dependency and the loss suffered by the claimants. In the present facts and circumstances of the case, the amount of Rs. 1,25,000 cannot be said to be unreasonable from any angle.

7. Learned Counsel for the appellant (owner of the vehicle) has argued that the

owner has wrongly been held liable to make payment of the compensation as the vehicle was insured with respondent Oriental Insurance Company. In reply to this, learned Counsel for the respondent Insurance Company argued that since the claimants as well as the owner failed to produce the insurance policy before the Tribunal and photocopy of the policy was not admissible in evidence, as such, the Tribunal has not committed any error of law in holding liability on the owner of the vehicle in question. This Court is unable to accept the submission advanced on behalf of the respondent Insurance Company, for the reason that in the written statement filed before the Tribunal, the Insurance Company has expressly admitted that the vehicle No. UP 0 7-D/491 owned by Jagat Singh was insured with it. It has been specifically stated in the written statement of Oriental Insurance Company that para 15 to 17 of the claim petition are admitted. In the circumstances, since the fact was admitted between the parties that the vehicle was insured with respondent Oriental Insurance Co., neither the claimants nor the owner were required to file copy of the policy. Since it was the case of the Oriental Insurance Company that the terms of the policy were violated it should have filed the copy of the policy to show that which of the terms was violated by the owner of the vehicle. In these circumstances, this Court is of the view that the Tribunal has erred in law by not holding Insurance Company liable to pay the amount of compensation awarded to the claimants on behalf of the owner. To that extent, since the Tribunal has committed the error of law, the appeal deserves to be allowed.

8. Accordingly, the appeal filed by the owner of the vehicle is allowed. The impugned judgment and award dated 16.8.1997, passed in M.A.C. Case No. 3 of 1996 is modified to the extent that the sum awarded by the Tribunal in favour of the claimants shall be paid by the respondent Oriental Insurance Company However, the interest awarded is reduced from 18% to 6%, if the amount of compensation is deposited within a month from today. If the amount is not deposited, within a month from today, the respondent Oriental Insurance Company shall be liable to pay interest at the rate of 9% per annum on the awarded sum of Rs. 1,25,000. The amount if deposited by the appellant may be withdrawn by him.

