

(2011) 11 UK CK 0066
In the Uttarakhand High Court
Case No : A.O. No. 91 of 2010

Kalyan Singh

APPELLANT

Vs

Oriental Insurance Company and Bachaspati Baluni

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2012) 2 AWC 1284

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

Hon"ble B.S. Verma, J.—Heard Learned Counsel for the appellant-applicant on condonation of delay in filing the appeal.

2. This appeal u/s 173 of the Motor Vehicles Act 1988 (for short the Act) has been filed by the owner of the vehicle involved in the motor vehicle accident. Since there was delay in filing the appeal, the appellant has also moved an application for condonation of delay, which is accompanied by an affidavit.

3. Notices of the delay condonation application were issued to the respondents. The respondent no. 2, who is claimant, has put in appearance through counsel. The respondent no.1 company has not turned up, though notice was served in the office of the Insurance Company, as is evident from the service report.

4. No objection has been filed against the delay condonation application. Grounds mentioned in the affidavit accompanying the delay condonation application are sufficient to condone the delay in filing the appeal.

5. In the interest of justice, the delay condonation application is allowed. Delay in filing the appeal is condoned.

6. Admit the appeal.

7. This appeal u/s 173 of the Act is directed against the award dated 28-2-2007 passed by the District Judge/Motor Accident Claims Tribunal, Pauri Garhwal (for

short the Tribunal), in Motor Accident Claim Petition No. 22 of 2003, Bachaspati Baluni Vs. Kalyan Singh and another, which was decided by the learned Tribunal along with Claim Petition No. 179 of 2003 Smt. Beena Devi and another Vs. Oriental Insurance Company and another by a common order.

8. Relevant facts giving rise to the present appeal in brief are that a motor accident occurred on 18-2-2003 involving bus No. UP 06-6253 at about 6 p.m. within the limits of village Kadhoor Bara Devikhal within district Pauri Garhwal. It appears that the ill-fated bus was carrying marriage party of deceased Bishambhar Singh and was returning from village Kathoor. The bus was being driven by driver Pramod Kumar. It appears that about 22 participants of Barat lost their lives on the spot and a number of persons suffered injuries in the motor accident. Separate claim petitions were filed for compensation before the Tribunal in respect of this accident. The bus in question was duly insured with the Oriental Insurance Company Limited at the time of accident. Different awards have been passed in respective claim petitions.

9. In the case at hand, the claim petition was preferred by the father of the deceased Pramod Baluni, who is dependent and one of the legal representatives of the deceased.

10. The Insurance Company contested the claim petition by filing its written statement. The motor accident was admitted, but the accidental death of the deceased was denied. It was asserted that the deceased was not a bona fide passenger in the bus and that the vehicle in question was being driven in violation of the policy conditions and it was carrying passenger beyond the prescribed limit at the time of accident. It was also asserted that the driver was not having a valid driving licence.

11. The owner-appellant filed its written statement and asserted that there were 38 passengers in the bus. Some other pleas were also raised in the written statement.

12. The learned Tribunal framed as many as six issues in the case, recorded the evidence led by the parties and heard them.

13. The learned Tribunal has held on Issue No. 1 that the accident occurred due to rash and negligent driving by the driver of the ill-fated bus. On issue no. 2, the learned Tribunal has come to the conclusion that the owner has filed photocopy of the driving licence of the driver but the same was not proved by the owner. It was also held that the claimant was travelling in the bus as a third party. Ultimately, the learned Tribunal has awarded a total compensation of Rs.54,000/- each in favour of claimant Bachaspati (father of the deceased) and Yadhoda Devi (mother of the deceased) payable by the Insurance Company, but at the same time the Tribunal has given recoverable rights to the Insurance Company against the owner on the ground that the vehicle was being driven in violation of the policy conditions.

14. In this appeal, the Learned Counsel for the appellant has contended that the finding of the learned Tribunal that the driver was not having a valid driving licence and that the vehicle was being driven against the policy conditions is not tenable. Learned Counsel for the appellant has argued that a number of claim petitions were filed arising out of the same motor accident and in other claim petitions, the learned Tribunal has held that the driver Pramod Kumar was having a valid driving licence at the time of accident and the owner was having valid documents in respect of the vehicle in question.

15. Learned Counsel for the appellant in the course of arguments has drawn the attention of the Court to the award passed by the learned Tribunal in Claim Petition No. 37 of 2003, Smt. Indu Devi and others Vs. Kalyan Singh and another arising out of the same motor vehicle accident and submitted that in that case Issue No. 5 was framed whether the driver of the ill-fated bus having a valid driving licence. The learned Tribunal in the award dated 26-9-2005 has held that the driver was having a valid driving licence. The argument of the Learned Counsel for the appellant is that since the driver Pramod Kumar had already died as a result of the said motor accident and as in other claim petitions it was held by the Tribunal that the driver was having a valid driving licence, therefore, it cannot be said that the driver of the ill-fated vehicle was not having a valid and effective driving licence.

16. The appellant has filed copy of the award dated 26-9-2005 passed in Claim Petition No. 37 of 2003 along with the memo of appeal as paper nos.31-34. Learned Counsel for the appellant has urged that this appeal may be allowed in terms of the award dated 26-9-2005 passed in Claim Petition No. 37 of 2003, Smt. Indu Devi and others Vs. Kalyan Singh and another decided by the learned Tribunal.

17. Learned Counsel for the claimant-respondent no. 2 has fairly submitted that the claim petition No. 37 of 2003 had arisen out of the same motor accident.

18. I have perused the award dated 26-9-2005 passed in Claim Petition No. 37 of 2003. The Issue Nos. 2 to 5 framed in that claim petition on the pleadings of the Insurance Company concerned are similar to that the issues framed in the case at hand. The learned Tribunal had clearly held on Issue No. 5 of Claim Petition No. 37 of 2003, Smt. Indu Devi and two others Vs. Kalyan Singh and another that the driver of the bus in question was having a valid and effective driving licence at the time of accident in question.

19. On perusal of the entire material on record, it is held that the driver of the ill-fated bus was having a valid and effective driving licence at the time of motor vehicle accident. Issue No. 2 framed in the present claim petition is decided accordingly.

20. Since the Insurance Company has not turned up to contest the appeal, it would be in the fitness of things that this appeal may be allowed in terms of the findings recorded in the aforesaid claim petition on Issue No. 3 to 5.

21. For the reasons and discussion above, the appeal is allowed in terms of the award dated 26-9-2005 passed in Claim Petition No. 37 of 2003, Smt. Indu Devi and others Vs. Kalyan Singh and another decided by the learned Tribunal. The impugned award dated 28-2-2007 stands modified accordingly in so far as it relates to findings on Issue Nos. 3 to 5. So far as the finding of recoverable rights given against the owner of the vehicle in the impugned award is concerned, the same is set aside. No order as to costs.

22. The amount of statutory deposit i.e. Rs. 25,000/- made by the appellant in appeal be refunded to the appellant.

23. All pending applications stand disposed of accordingly.