(2007) 10 UK CK 0032

In the Uttarakhand High Court

Kiran Kumar Verma APPELLANT

Vs

Oriental Insurance Company and Another RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 166, 173

Citation : (2008) 1 AWC 94

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Shri Z.A. Siddiqui, counsel for the appellant.

2. This is claimant''s appeal.

3. By the present appeal, filed u/s 173 of Motor Vehicles Act, 1988, the appellant has prayed for setting aside the judgment and award dated 17.7.2003, passed by the Motor Accident; Claims Tribunal, Nainital in M.A.C.P. No. 191 of 1997.

4. Briefly stated, a Motor Accident Claim Petition No. 191 of 1997 was made u/s 166 of Motor Vehicles Act for compensation of Rs. 2,00,000 on account of damages caused to the truck No. U.R.B.-5170. According to the claimant, he was the owner of truck No. U.R.B.-5170. On 6.6.1997 at about 8 p.m., when his truck was standing near Shantipuri Barrier, the truck No. U.P. 32A/3266 which was being driven rashly and negligently dashed the truck of the claimant which was stationary. As a result of the said accident, the truck of claimant got damaged. The report of the accident was lodged on the same date. The claimant has claimed a sum of Rs. 2,00,000.

5. A written statement has been filed by the Oriental Insurance Company. It has been submitted that the claimant has not proved that he was the owner of truck No. U.R.B.-5170 and how much damages have been caused to him. It has been submitted that according to the insurance policy, the insurance company is only

liable to pay the compensation of Rs. 6,000 only. Since, the claimant has not proved how much damages have been caused to him, the insurance company is not liable to indemnify the claim. The claim petition is liable to be dismissed.

6. The owner of the offending truck has filed a written statement and has submitted that the accident had taken place due to rash and negligent driving by the driver of truck of the claimant. It has also been submitted that the truck No. U.P. 32A/3266 was insured with the Oriental Insurance Company and the insurance company is liable to indemnify the claim, if any.

7. On the pleadings of the parties, following issues were framed:

1- D;k fnukad 6-6-1997 dks fnu ds yxHkx vkB cts LFkku ''kkafriqjh cSfj;j ds ikl okgu la0 ;w0ih0 32,&3266 dks mlds pkyd us rsth ,oa ykijokgh ls pykdj ;kph ds okgu la0 ;w0vkj0ch0 5170 dks iw.kZ:i ls {kfrxzLr dj fn;k \\

2- D;k ;kfpdk vko'';d i{kdkj u cuk;s tkus ds dkj.k dqla;kstu ls nwf"kr gS \\

3- D;k nq?kZVuk ds le; okgu la0 ;w0ih0 32,&3266 foi{kh la0 1 }kjk chek lafonk dh ''krksZ ds varxZr Fkk \\ ;fn gkaW rks izHkko \\

4- D;k ;kph dksbZ vuqrks"k ikus dk vf/kdkjh gS \\ ;fn gkWa rks fdlls ,oa fdruk vf/kdkjh gS \\

8. The claimant has examined P.W. 1 Kiran Kumar and P.W. 2 Dev Singh. The owner of the offending truck has not appeared at the time of evidence, therefore, ex parte proceedings were initiated against him. The Oriental Insurance Company has not adduced any oral evidence.

9. The claimant has produced paper No. 6ga 1 which is copy of F.I.R., some photographs, registration certificate and permit, tax payment certificate of truck No. U.P. 32A/3266, insurance cover note and driving licence of driver of truck No. U.P. 32A/3266. In addition to these, the claimant has produced technical inspection report, copy of charge-sheet, copy of estimate given by Chandra Body Builders and survey report produced by Shri A. K. Agrawal.

10. While deciding issues Nos. 1 and 4 as to whether on 6;6.1997 at about 8 p.m., vehicle No. U.P. 32A/3266 which was being driven rashly and negligently by its driver dashed the vehicle No. U.R.B.-5170, the Claims Tribunal has taken into consideration, the statement of P.W. 1 Kiran Kumar and P.W. 2 Dev Singh who have submitted that on 6.6.1997 at about 8 p.m. when the vehicle No. U.R.B.-5170 was standing at Shantipuri Barrier, the truck No. U.P. 32A/3266 which was being driven rashly and negligently, dashed the vehicle No. U.R.B.-5170 and caused damages to it. So far as compensation is concerned, the Claims Tribunal has recorded the finding that the vehicle No. U.R.B.-5170 was of 1979-80 model when the accident had taken place in the year 1997. The claimant has stated that he had purchased the vehicle No. U.R.B.-5170 in the year 1995 and since the claimant has not produced any document regarding repairing of the vehicle, it cannot be presumed that how much damages have

been caused to his vehicle and how much compensation he is entitled to get from the opposite parties. Claims Tribunal has recorded the finding that the claimant is not entitled to get compensation on the basis of assumptions and his claim petition is liable to be dismissed.

11. While deciding issue No: 2 with regard to impleadment of necessary parties, the Claims Tribunal has considered the argument of the counsel for the claimant who had argued that the truck No. U.R.B.-5170 was not insured, hence, there arose no question to implead the insurance company as necessary party. This issue was decided in favour of the claimant.

12. While deciding issue No. 3 as to whether the offending truck was being driven as per insurance policy, the Claims Tribunal has taken into consideration the permit, registration certificate brought on record and has recorded the finding that the offending vehicle No. U.P. 32A/3266 was being driven as per the policies of insurance company. Further, taking into consideration the insurance cover note, the Claims Tribunal has recorded the finding that vehicle No. U.P. 32A/3266 was insured with the Oriental Insurance Company. In view of the aforesaid, I do not find any infirmity in the findings recorded by the Claims Tribunal.

13. Counsel for the appellant has stated that the Claims Tribunal has erred in not awarding a minimum amount of Rs. 6,000 as per statutory liability of Rs. 6,000 u/s 147(2)(b) of Motor Vehicles Act.

14. Since the Claims Tribunal has already come to the conclusion that the accident had taken place due to rash and negligent driving by the truck No. U.P. 32A/3266 and the same was insured with the Oriental Insurance Company, the appellant shall be entitled to recover a sum of Rs. 6,000 from the Oriental Insurance Company alongwith interest thereon at the rate of 7.5 per cent.

Subject to the aforesaid, appeal is liable to be dismissed. Further, it will be open for the appellant to recover the other amount from the owner of the offending truck No. U.P. 32A/3266, if he is so advised.

15. Cosequently, appeal is dismissed. No order as to costs.