(2009) 06 UK CK 0013

In the Uttarakhand High Court

Kishan Ram and Another — APPELLANT

Vs

Raju Rawat and Another
 Oriental Insurance Co. Ltd. Vs Kishan Ram and Others — RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 06 UK CK 0013

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Judgement

B.C. Kandpal, J.—Since both these appeals arise out of same judgment and award and common question of law is involved in them, therefore, they are being decided by this common judgment and order.

2. These appeals, u/s 173 of Motor Vehicles Act, 1988, have been preferred against the judgment and award dated 07.11.2006 passed by Motor Accident Claims Tribunal/District Judge, Pithoragarh, in Motor Accident Claim Petition No. 55 of 2003, Kishan Ram and Anr. v. Raju Rawat and Anr.

3. The brief facts of the petition that Sri Vinod Kumar was travelling by Vehicle No. U.A.05/1591 and when the said vehicle reached at 5.30 p.m. on 18.6.2003 the said vehicle fell into a ditch. The driver of the said vehicle was driving the said vehicle rashly and negligently at the time of accident which resulted into the death of Vinod Kumar on the spot. It has been alleged that Vinod Kumar was 23 years of age and was earning Rs. 4,500/- per month by working as Salesman. The claimants claimed compensation of Rs. 7,00,000/- with interest during the pendency of the case and for future.

4. Opposite party No. 1-Raju Rawat, owner of Jeep No. U.A.05/1591, filed written statement denying the allegations of the claim petition for want of knowledge and alleged that the on the date of accident his driver was driving the vehicle cautiously and by the side of the road. The accident happened due to the

technical defect of the vehicle. The said accident was not occurred due to rash and negligent driving of the driver of said vehicle. The owner also alleged that said vehicle was insured with opposite party No. 2 and he had all the papers of the said vehicle regarding registration certificate, permit etc. and his driver also possessed the valid driving licence at the time of accident.

5. Opposite party No. 2-Oriental Insurance Co. Ltd. filed its written statement that the claimants had to prove the contents of the accident and denied the claim. It is also stated that the claimants had claimed excessive amount of compensation without any legal basis. The claimants had not given full facts and particulars of the alleged accident, the site plan and other relevant papers as copy of the F.I.R., injury report, post mortem report, name and address of the doctors who attended the injured/deceased etc. The insurance company also alleged that the owner of the vehicle in question did not possess the valid documents regarding registration certificate, insurance of the vehicle and the driver did not also have valid driving licence at the time of the accident. The insurance company also took the defence that the claimants have claimed excessive amount without any reasonable formula and shown wrong facts to get excessive amount of compensation hence the claim petition is liable to be rejected with costs against answering opposite party.

6. The learned Tribunal on the basis of the pleading of the parties framed necessary issues in the claim petition. Parties led oral as well as documentary evidence in support of their cases. The learned Tribunal after having considered the evidence available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 1,04,500/- against opposite party No. 2-Oriental Insurance Co. Ltd., vide impugned judgment and award dated 07.11.2006. The Tribunal further directed the opposite party No. 2 to pay the said amount of compensation within 30 days and in default of payment within stipulated time, the claimants shall be entitled to get simple interest on the awarded amount of compensation at the rate of 8% per annum from the date of filing the judgment of the case till the actual date of payment.

7. Feeling aggrieved by the aforesaid impugned judgment and award, the Oriental Insurance Co. Ltd. has preferred A.O. No. 834/2006, while claimants have filed A.O. No. 141/2007 for enhancement of amount of compensation, before this Court.

8. Sri v. K. Kohli, Senior Advocate assisted by Sri I.P. Kohli, learned Counsel for Oriental Insurance Co. Ltd., Sri Neeraj Upreti, learned Counsel for the claimants and perused the record.

9. Learned Counsel for the insurance company has submitted that vehicle in question was being plied as goods vehicle at the time of accident and deceased was travelling in the said vehicle as a gratuitous passenger, therefore, the insurance company cannot be held liable to pay the compensation.

10. On the other hand, learned Counsel for the claimants has submitted that

amount of compensation awarded by the Tribunal is meagre and the same is liable to be enhanced by this Court.

11. As far as factum of accident is concerned, the learned Tribunal has dealt with this point while deciding issue No. 1 in the impugned judgment and award. The record shows that claimants have filed photo copy of G.D. and photo copy of post mortem report which reveal that vehicle in question was being driven rashly and negligently when the deceased was travelling by the said vehicle with his goods and he succumbed to injuries sustained by him. The post mortem report also shows that deceased received serious injuries and died due to the said injuries. Dhan Singh, PW-2, who is an eye- witness, also stated on oath and deposed that at the time of accident, he was going by the side of road where accident took place and said vehicle hit this witness. This witness further stated that he got injuries in the said accident. This witness has also been cross examined and he deposed that in the said accident total number of dead persons was five and three other persons were injured including himself and driver. Mohan Singh Dangwal also admitted the fact in his statement as DW-2 that Dhan Singh was injured by the accident and had not recorded his statement during his investigation. Mohan Singh Dangwal is the witness of insurance company. Thus witness of insurance company admitted the occurrence of Dhan Singh, PW-2 at the time of accident. Thus, the petitioners have fully proved that the fact that accident took place due to rash and negligent driving of the said vehicle. No evidence is available on record which may reveal the fact that deceased sustained injuries due to his own negligence. The learned Tribunal having considered the entire evidence adduced before it recorded the finding that driver of vehicle No. U.A.05/1591 was rash and negligent while driving the vehicle at the time of accident and met with an accident, in which deceased-Vinod Kumar sustained injuries and died. I do not find any infirmity in the said finding recorded by the Tribunal in this regard.

12. The Tribunal further held that vehicle in question had all valid papers and driver had valid driving licence at the time of accident.

13. As far as issue No. 3 as to whether vehicle in question was being plied in contravention of the terms of insurance policy, is concerned, the burden to prove this issue is on the insurance company. The counsel for insurance company has pleaded before the court below that as per Surveyor report eight persons were travelling by the vehicle in question and vehicle was being plied by the driver against the policy of insurance. Counsel for insurance company also pleaded that vehicle in question was authorized to carry the goods and not to carry the passengers and insurance company is not liable to pay the compensation. Sri Mohan Singh Dangwal, D.W.-2, witness of insurance company, stated on oath that he was not present at the time of accident and he inspected the spot after two months. This witness further stated that it is wrong to say that three pedestrians were also injured in the said accident. From the perusal of statement of DW-2, it is evident that the said witness did not record the statement of any

injured witnesses who were injured in the said accident. The insurance company did not adduce any such witness i.e. injured person who might say that no pedestrian was injured and all the persons alleged to be injured were sitting inside the vehicle and were travelling by the vehicle in question. Thus, the eye witnesses corroborated the fact that deceased was sitting inside the vehicle in question and the said vehicle was being driven rashly and negligently. The insurance company also paid O.D. claim to the owner of vehicle in question vide paper No. 60C and this fact also supports that vehicle in question was not being plied against the rules of insurance policy. Thus, the learned Tribunal decided this issue against the insurance company.

14. So far as amount of compensation to be awarded in favour of claimants is concerned, the learned Tribunal has dealt with this point while deciding issue No. 4 in the impugned judgment and award. The claim petition shows that deceased was 23 years of age at the time of accident and was earning Rs. 4,500/- by doing service as Salesman. P.W.1 Kishan Ram, father of the deceased, stated that he had not filed any certificate as to age and income of the deceased-son. The learned Tribunal in absence of any cogent and reliable evidence with regard to income of deceased has assessed the income of deceased at Rs. 15,000/- per annum and after deducting 1/3rd out of it as personal expenses of the deceased, the financial dependency of the claimants comes to Rs. 10,000/-. The learned Tribunal adopted the multiplier of ''10'' in this case and after applying the multiplier of ''10'', the total amount of compensation comes to Rs. 10,000 x 10=Rs.1,00,000/-. The Tribunal further awarded a sum of Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of Estate. Thus, the claimants have been awarded a total sum of Rs. 1,04,500/- as compensation. I am of the view that learned Tribunal has adopted absolutely right method in awarding the amount of compensation to the claimants. I do not find any infirmity in the said finding recorded by this Tribunal in this regard.

15. As far as rate of interest is concerned, it appears from the impugned judgment and award that the Tribunal has awarded conditional interest at the rate of 8% per annum from the date of filing the petition till the date of actual payment. I think it is not justified. In fact, the rate of interest should be 6% per annum from the date of filing the petition till the date of actual payment on the awarded amount of compensation.

16. In view of the above, A.O. No. 141/2007 filed by the claimants is liable to be partly allowed, while A.O. No. 834/2006 filed by Oriental Insurance Co. Ltd. is liable to be dismissed.

17. Accordingly, A.O. No. 141/2007 is partly allowed. The impugned judgment and award is modified to the extent that claimants are entitled to get compensation of Rs. 1,04,500/- along with interest at the rate of 6% per annum from the date of filing the petition till the date of actual payment (instead of conditional interest @ 8% per annum as has been awarded by the Tribunal).

18. A.O. No. 834/2006 filed by Oriental Insurance Co. Ltd. is hereby dismissed.

19. The statutory amount deposited with this Court be remitted to the Tribunal concerned.

20. Let a copy of this judgment be placed in the file of A.O. No. 834/2006.