
(2019) 02 UK CK 0047
In the Uttarakhand High Court
Case No : Appeal From Order No. 219 Of 2008

Nafis Ahmad

APPELLANT

Vs

Nawajis Ali & Others

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Citation : (2019) 02 UK CK 0047

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Neeraj Upreti, Lalit Belwal, Deepak Rawat

Final Decision : Partly Allowed

Judgement

Alok Singh, J

1) Present appeal has been preferred by the appellant-claimant against the judgment and order dated 09.04.2008 passed by the Motor Accident Claims Tribunal/District Judge, Pauri Garhwal in M.A.C.P. No.10 of 2004, Nafees Ahmad vs. Nawajis Ali & others, whereby the learned Tribunal has rejected the claim petition.

2) Brief facts of the case are that a claim petition was filed by the claimant-injured (Nafees Ahmad) alleging therein that on 02.09.2003 he was travelling in a truck No.UP-20B-8512 from Nazibabad to Haldwani. When the truck reached near Rampur Railway Crossing, due to rash and negligent driving of an unknown vehicle, it (an unknown vehicle) dashed the said truck. The claimant has sustained fracture on his left leg and also sustained grievous injuries all over the body. Claimant-injured claims a sum of Rs.4,40,000/- as compensation.

3) The Tribunal, after considering the material evidence on record, held that the accident took place due to rash and negligent driving of the driver of an unknown vehicle; the deceased had sustained injuries in the accident; and the vehicle was not being driven by the driver in violation of the terms and conditions of the

insurance policy. But, the Tribunal held that the claimant was travelling as a gratuitous passenger in the truck in question and he was not a fare paid passenger, hence, his claim was rejected.

4) I have carefully considered the arguments addressed by learned counsel for the appellant and learned counsel for respondents, perused the judgment and documentary evidence.

5) The case of the claimant is that on 02.09.2003 while he was proceeding in the truck in question from Nazibabad to Haldwani, the vehicle met with an accident in which he sustained grievous injuries. He filed a claim petition for seeking compensation.

6) As per paper no.33C, Ejhar Khan, driver of vehicle No. UP-20B-8512 moved an application on 03.09.2003 before the Kotwali Incharge, Haldwani, District Nainital with the averments that on 02.09.2003 at about 11:30 PM, he was riding in the vehicle from Nazibabad to Haldwani and, on the way near railway crossing due to brake failure of his vehicle, it colluded with an unknown vehicle and due to this, two persons, namely, Nafees Ahmad (i.e. claimant) and one Rais Ahmad sustained serious injuries. It appears that the complaint was lodged to the police, but the FIR was not registered and the said application depicts the seal of the Kotwali, Haldwani. The said application has also been admitted by the opposite party no.1 in the claim petition. So, the said application is the first information of the incident, which was given to the police station. Moreover, Ijhar Khan, driver of the truck bearing No. UP-20B-8512 was produced as defence witness, who stated on oath (paper no.63Kha), that the claimant was travelling in vehicle in the capacity of the owner of the goods/vegetables on the date of accident. In the cross-examination, the claimant has stated that on 02.09.2003, he was travelling in the vehicle from Nazibabad to Haldwani as owner of the goods; and the vehicle in question was carrying fruits and vegetables. Thus, it is clearly established that the claimant was travelling in the vehicle as 'owner of the goods' and there is no rebuttal on this point. Therefore, I have no hesitation to hold that the Tribunal has committed an error in holding that the claimant was travelling as gratuitous passenger in the truck in question. The claimant was travelling in the truck in question as the owner of his goods. The findings of the Tribunal with regard to issue nos.3 & 4 are modified accordingly. Hence, the said portion of the judgment has to be set aside. The claimant has incurred a sum of Rs.70,000/- towards his medical treatment and the medical bills showing the said amount have also been enclosed in the record. Taking into consideration the injury sustained and suffering undergone, I am of the opinion that, it is appropriate to award a compensation of Rs.70,000/-towards the medical expenses. The Tribunal has rightly held that the vehicle in question was not being driven by the driver in violation of the terms and conditions of the insurance policy. The findings of the Tribunal with regard to issue nos.1 & 2 are affirmed. Since, the vehicle in question was insured with the Oriental Insurance Company, hence, the aforesaid amount of compensation shall be paid by the Oriental Insurance Company/

respondent no.2.

7) In view of above, appeal is allowed in part. The judgment and order dated 09.04.2004 passed in M.A.C.P. No.10/2004 is modified to the above extent. The claimant is entitled for compensation of Rs.70,000/- (Rupees Seventy Thousand only). The opposite party No.2, Oriental Insurance Co. Ltd. is directed to deposit the said amount in favour of the claimant within 60 days from 01.03.2019, failing which, opposite party-Insurance Co. shall be liable to pay interest @ 9% p.a. from the date of filing the claim petition till the date of realization of the entire amount. No order as to costs.