

(2004) 06 UK CK 0011
In the Uttarakhand High Court
Case No : A.F.O. No. 1052 of 2001

National Insurance Co. Ltd.	Vs	APPELLANT
Hansi Bisht and Others		RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 166A

Citation : (2005) 3 ACC 89 : (2005) ACJ 794

Hon'ble Judges : Rajesh Tandon, J; M.M. Ghildiyal, J

Bench : Division Bench

Advocate : Lalit Belwal, for the Appellant; Amit Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Present appeal has been filed against the judgment and award dated 12.8.1997 passed by the Motor Accidents Claims Tribunal, Nainital.

2. Briefly stated the facts giving rise to the present appeal are that ten claim petitions u/s 166A of the Motor Vehicles Act, have been filed by the claimants for compensation in respect of the accident which took place on 8.5.1993 at 8.30 a.m. involving bus No. UP 02-5870. The petitioners have stated that deceased Jeewan Singh, Bhopal Singh, Ram Lal Sah, Godhan Singh, Khim Singh, Daulat Singh, Dr. Mukesh Sati, Baldeo Prasad, Madan Singh, Hira Singh and others started their journey from village Saur Vinayak on 8.5.1993 in bus No. UP 02-5870 for Katabagh. They were the members of a marriage party of Rajendra Singh Bisht. The bus was being driven rashly and negligently. When the bus reached near Burao Pahar, it met with accident and rolled into khad causing the death of the deceased persons.

3. The respondent No. 1 contested the claim petition and filed his written statement. He denied that the accident was the result of rash and negligent driving of the bus. Respondent No. 2 insurance company has stated that the owner and driver of the bus in question have violated the terms and conditions of

the insurance policy.

On the pleadings of the parties the following issues were framed:

(1) Whether the accident in question was caused due to rash and negligent driving of bus No. UP 02-5870 by the driver thereof?

(2) To what amount of compensation the claimants" are entitled and from which of the respondents?

4. The learned Claims Tribunal after recording the evidence has held that the accident was caused due to rash and negligent driving of the bus in question. He awarded compensation of Rs. 2,12,000 in Claim Petition No. 489 of 1993, Rs. 96,000 in the Claim Petition No. 490 of 1993, Rs. 90,000 in Claim Petition No. 500 of 1993, Rs. 2,80,000 in Claim Petition No. 501 of 1993, Rs. 2,54,000 in Claim Petition No. 502 of 1993, Rs. 1,25,000 in Claim Petition No. 503 of 1993, Rs. 2,53,000 in the Claim Petition No. 504 of 1993, Rs. 3,60,000 in Claim Petition No. 518 of 1993, Rs. 75,000 in Claim Petition No. 538 of 1993 and Rs. 1,45,000 in Claim Petition No. 539 of 1993. Feeling aggrieved by the judgment and award passed in M.A.C. No. 489 of 1993 (Hansi Bisht v. Uma Shah) the present appeal has been filed.

5. We have heard the learned counsel for the parties and have gone through the entire record of the case.

6. It has been contended by the learned counsel for the appellant that the owner and driver of the bus have flouted the terms and conditions of the insurance policy as the capacity of the bus was 25 and it was insured for 25 passengers only. However, as per information received by appellant at the time of accident there were 51 passengers travelling by the bus out of which 17 persons died in the accident. It was further contended that the driver of the bus has no valid driving licence.

7. The issues of violation of terms and conditions of insurance policy and that the driver of the bus has no valid driving licence have been raised by the appellant-respondent National Insurance Co. Ltd. Therefore, burden of proof lies upon the insurance company. The insurance company has not pressed before the learned Claims Tribunal for framing of issues on both these points nor lead any evidence in this connection. However, if the owner of the vehicle has flouted the terms and conditions of insurance policy or the driver has no valid driving licence, the liability of the insurance company towards the third party does not get avoided. The insurance company on proof that owner of vehicle was aware of fact that licence was fake, can, however, recover the amount from insured.

8. As held by the Apex Court in the case of United India Insurance Company Ltd. Vs. Lehu and Others, , as under:

"Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown

that there is a "breach". As held in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC) and *Sohan Lal Passi Vs. P. Sesh Reddy and others*, , the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "no". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is of insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus, it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer a loss. These provisions meet these requirements. We are thus in agreement with what has been laid down in the aforementioned cases, viz., that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

9. The appellant has examined DW 1 Dinesh Chandra Saxena who investigated the case of the accident of the bus. He has stated that the bus was insured for 25 passengers only while there were 51 passengers travelling by the bus at the time of the accident. The learned Claims Tribunal has held that the accident was caused due to rash and negligent driving of the bus in question and it was not due to overloading of the bus. The bus was comprehensively insured with the appellant for third party insurance and the appellant was bound to pay compensation to the passengers travelling by the bus.

10. In view of the above, the appeal has no merit and is hereby dismissed with costs.