

(2006) 04 UK CK 0028
In the Uttarakhand High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Khuswanti and Others		RESPONDENT

Date of Decision : 22-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 170, 173

Citation : (2007) ACJ 2155

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") is directed against the judgment and award dated 19.11.1999, passed by the Motor Accidents Claims Tribunal/District Judge, Uttarkashi (in short "the Tribunal") in Motor Accident Claim Petition No. 33 of 1996, Khuswanti v. Nag Chandra Ramola, whereby compensation of Rs. 85,000 has been awarded in favour of the claimant along with interest at the rate of 12 per cent per annum from the date of accident against the appellant insurance company.

2. Relevant facts are that the claimant Khuswanti preferred claim petition u/s 166 of the Act for compensation of Rs. 3,17,400 in respect of injuries suffered by her in a motor vehicle accident on 3.12.95 involving truck No. 08-1435 near Chinyalisaur on Tehri-Uttarkashi Road, due to rash and negligent driving by its driver. O.P. No. 1 was the driver of the said truck. The claimant was admitted in District Hospital, Uttarkashi.

3. The appellant insurance company contested the claim petition contending that there was no fault of the truck driver and the accident occurred due to technical fault. It was also asserted that there was violation of insurance policy as 11 passengers were boarded on the alleged truck. The owner of the vehicle also filed his written statement admitting the ownership of the truck, but pleaded that he had sold the same on 25.11.1994 to one Ganesh Nautiyal, hence he was not liable for compensation.

4. Learned Tribunal framed necessary issues in the case and after recording evidence of the parties and perusing the same, the Tribunal has held that the accident occurred due to rash and negligent driving on the part of the driver of the offending truck. The Tribunal further held that the truck was duly insured with National Insurance Co. Ltd. on the date of accident. Regarding violation of policy conditions, the Tribunal has found that on the basis of evidence on record, it was proved that Bharat Singh was carrying his goods by the truck in question and the occupants were his family members, being the owners of the goods. It was, therefore, held that the insurance company was liable to pay compensation. Ultimately, the Tribunal has awarded compensation of Rs. 85,000 in favour of the claimant against the appellant insurance company.

5. In this appeal, the impugned award has been assailed mainly on the point of quantum. Besides, it was also contended that truck being loaded with unauthorised passengers including the claimant, there was violation of policy conditions and the finding of the Tribunal to the contrary is not maintainable.

6. It may be mentioned that the insurance company has not obtained permission of learned Tribunal u/s 170 of the Act. Moreover, there is no such finding of the Tribunal that the claim petition has been filed in collusion between the claimant and the person against whom the claim has been made. In such circumstances, it is not open to the insurance company to challenge the award passed by the Tribunal on the point of negligence or contributory negligence and also on the quantum of compensation in view of the law laid down by the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . The appeal is not maintainable on this score. In that case, it has been observed by the Apex Court that "even if no appeal is preferred u/s 173 of 1988 Act by an insured against the award of a Claims Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle".

7. I have heard submission of learned Counsel for the appellant insurance company and perused the entire material on record.

8. It has been vehemently submitted on behalf of the appellant that the insurance company was not liable to make payment of compensation in view of the provisions of Section 147 of Motor Vehicles Act, 1988, as the insurance policy did not cover the risk of the owner of the goods. This contention of the appellant is without force. Admittedly, the motor accident in which the claimant suffered injuries occurred on 3.12.1995. It is clear that the accident had occurred after amendment in Section 147 of the Act in the year 1994, which came into force w.e.f. 14.11.1994. I am of the considered view that after the amendment in Sub-clause (i) of Section 147(1)(b) of the Act, injury to any person includes owner of the goods or his representatives carried in goods carriage. I am fortified in my view by the Apex Court judgment in the case of Ramesh Kumar Vs. National Insurance Co. Ltd. and Others, .

9. In the instant case, the record of the case shows that Bharat Singh was carrying his dowry articles from the house of his in-laws. The driver of the truck was his brother-in-law. Khuswanti is the sister of the deceased Bharat Singh. There is clear-cut finding of the Tribunal that claimant and her deceased brother Bharat Singh were the owners of the goods being carried in the truck in question. Learned Tribunal was fully justified in fastening the liability upon the insurance company to pay the compensation amount and the impugned order does not suffer from any infirmity.

10. The learned Counsel for the appellant insurance company has, however, submitted that the award of 12 per cent interest is on the higher side, which may suitably be reduced in view of the Apex Court judgment in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

11. I have considered the Apex Court judgment and the facts and circumstances of the case. Considering the decline in the present bank rates of interest, I am of the view that the interest at the rate of 12 per cent per annum as awarded by the Tribunal may be reduced to 9 per cent per annum. To this extent alone, the impugned order dated 19.11.1999 stands modified and the claimant shall be entitled to interest at the rate of 9 per cent per annum instead of 12 per cent per annum from the date of the accident as awarded by the Tribunal. The appeal deserves to be partly allowed.

12. The appeal is partly allowed. The impugned judgment and the award dated 19.11.1999 stands modified to the above extent. The claimant shall be entitled to interest on the compensation awarded at the rate of 9 per cent per annum instead of 12 per cent. No order as to costs.

13. The amount in deposit with this Court, if any, be transmitted to the Motor Accidents Claims Tribunal concerned for being paid to the claimant.