
(2019) 07 UK CK 0182

In the Uttarakhand High Court

Case No : Appeal From Order No. 91 Of 2011

National Insurance Co. Ltd

APPELLANT

Vs

Shahjahan & Others

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0182

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Prabhat Pande, G.C. Lakhchaura

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. Before this Court is the Insurance Company which has challenged the award dated 03.09.2010 given by the Motor Accident Claims Tribunal, Kashipur, District Udham Singh Nagar, on a claim petition filed by the claimants who are legal heirs of deceased "Banne Peer".

2. Brief facts of the case are that on 19.08.2008 "Banne Peer" (deceased) along with his friend was going to "Jalalpur" via "Dadiyal" on his motorcycle bearing registration no. UP 22 J 6228. When they reached near the bridge at "Dolatpuri Mod", a truck bearing registration no. UP 12 3619 which was being driven by its driver rashly and negligently hit the motor cycle from behind, as a result of which, Banne Peer sustained grievous injuries and ultimately passed away on the same day. The claimant no. 1 who is the widow of Banne Peer and claimant nos. 2 and 3 who are minor children of Banne Peer filed a claim petition before the Motor Accident Claims Tribunal claiming a compensation of Rs. 20,00,000/- (Rupees Twenty Lakh only).

3. It was said in the claim petition that the deceased was earning a monthly salary of Rs. 7,500/- (Rupees Seven Thousand Five Hundred only). The truck was

duly registered and was insured with the insurance company, etc.

4. The learned Tribunal thereafter after evaluating all the facts came to the conclusion that the truck was indeed being driven rashly and negligently by its driver and the truck was insured by the National Insurance Company Limited.

5. Regarding the amount, the learned Tribunal came to the conclusion that a compensation of Rs. 2,79,000/- (Rupees Two Lakh Seventy Nine Thousand only) is liable to be given to the claimants, along with 6 per cent interest per annum, which shall be calculated from the date of claim petition.

6. There is presently no appeal before this Court by the claimants for enhancement of the amount. The insurance company has also not challenged the amount or the quantum fixed.

7. The insurance company has challenged the award on ground that the owner of the concerned truck had already sold the truck to one Jaspal Singh on 9.03.2006, although the accident occurred on 19.08.2008. According to the learned counsel for the appellant, though the truck was sold to another person, but the insurance continued to be in the name of its earlier owner, and therefore it is in violation of the insurance policy.

8. The learned counsel for the claimants submits that it is not true and in any case this plea is being raised by the insurance company for the first time in appeal.

9. In view thereof, the argument raised by the learned counsel for the appellant is not liable to be accepted, as it is being raised before this Court for the first time. This was not the objection taken by the insurance company before the Tribunal.

10. This Court finds no fault with the award passed by the learned Motor Accident Claims Tribunal. The appeal is therefore liable to be dismissed and is hereby dismissed.

11. By order of this Court dated 07.07.2011, the statutory amount deposited before this Court has already been remitted to the concerned Tribunal. The amount of compensation has also been deposited by the appellant before the concerned Tribunal. Let the amount of compensation be given to the claimants within two weeks from the date of production of a certified copy of this order, if not already given. The interest on the amount shall also be calculated from the date of the petition by the Tribunal and this shall be forthwith given to the claimants.