
(2008) 09 UK CK 0028

In the Uttarakhand High Court

Case No : Appeal From Order No. 432 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Sudhanshu Bisht and Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 1 UC 79

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

Bench : Single Bench

Advocate : D.S. Patni, for the Appellant; D.C.S. Rawat, for Respondent No. 1., Z.U. Siddiqui, for Respondent No. 2. and T.A. Khan, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of Motor Vehicles Act, 1988 has been preferred by National Insurance Company Limited (insurer of Truck No. UP-02B/9642) against the judgment and award dated 9-5-2006 passed by Motor Accident Claims Tribunal / Addl. District Judge / III Fast Track Court, Nainital, in MACP No. 139 of 2004, Sudhanshu Bisht v. Naseerulla and others.

2. Briefly stated the fact as narrated in the claim petition are that on 26-6-2003, claimant-Sudhanshu Bisht along with Pramod Lohni was going on scooter No. U.P. 04A/1666 from Dineshpurto Haldwani. The aforesaid scooter was being driven by claimant-Sudhanshu Bisht in this accident. As soon as the scooter reached at Tanda Railway Station at about 12.30 in night, a truck bearing Registration No. UP-02B/9642 coming from opposite direction in rash and negligent manner, hit the scooter, on account of the same claimant-Sudhanshu Bisht as well as Pramod Lohni sustained grievous injuries on their person. It has been alleged that claimant-Sudhanshu Bisht was 32 years of age and was earning Rs. 5000/- per month. The claimant claimed compensation against opposite parties.

3. Opposite parties No. 1 and 2 (owner and driver of truck in question), inspite of sufficient service of notice upon them, did not contest their case.

4. Opposite party No. 3- Ghanshyam Singh Bisht (owner of scooter in question) filed written statement admitting the factum of accident, but amount of compensation has been demanded excessively. The said accident had occurred due to rash and negligence of truck driver. His scooter was insured with New India Assurance Company Limited w.e.f. 30-4-2003 to 29-4-2004 and therefore the liability to pay the compensation, if any, is of insurance company. The claim petition filed against opposite party No. 3 is liable to be dismissed.

5. Opposite party No. 4- The New India Assurance Co. Ltd. (insurer of scooter in question) filed written statement refuting the contents of claim petition and pleaded that claimant has no cause of action to file claim petition and therefore on that ground the claim petition is liable to be dismissed.

6. Opposite party No. 5- National Insurance Co. Ltd. (insurer of truck in question) filed written statement pleading therein that driver of vehicle involved in the accident was not made party and therefore the claim petition was bad for non-joinder of necessary party and drivers of both the vehicles involved in the accident were not holding valid and effective driving licence. This accident had occurred due to rash and negligent driving of scooterist and therefore the liability to pay the compensation, if any, is of owner as well as insurer of scooter in question. It has also been pleaded that answering opposite party can be held liable to pay compensation only when owner of vehicle proves that his vehicle was validly insured and all papers relating to vehicle were valid and effective and in case there is breach of conditions of insurance policy on the part of owner of vehicle, the insurance company is not liable to pay any compensation.

7. The learned Tribunal on the basis of pleadings of parties framed relevant issues in the claim petition. Parties led evidence in support of their cases. The learned Tribunal after having considered the entire material available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 7,77,000/- in favour of claimant-Sudhanshu Bisht and directed opposite party No. 5-National Insurance Co. Ltd. to pay the amount of compensation to the claimant along with conditional interest @ 6% per annum, vide judgment and award dated 9-5-2006.

8. Feeling aggrieved by the aforesaid impugned judgment and award dated 9-5-2006, the Appellant-National Insurance Company Ltd. has preferred the present appeal before this Court.

9. Heard Sri D.S. Patni, learned Counsel for Appellant-National Insurance Co. Ltd., Sri D.C.S. Rawat, learned Counsel for claimant-Respondent No. 1, Sri Z.U. Siddiqui, learned Counsel for Respondent No. 2, Sri T.A. Khan, learned Counsel for Respondent No. 5-The New India Assurance Co. Ltd. and perused the record.

10. As far as factum of accident is concerned, the evidence available on record shows that claimant-Sudhanshu Bisht along with his friend Pramod Lohni was going on Scooter No. U.A.04A/1666 from Dineshpur to Haldwani. The aforesaid scooter was being driven by Sudhanshu Bisht in this accident. As soon as the

scooter reached at Tanda Railway Station at 12.30 in the night, a truck No. UP-02B/9642 coming from opposite direction in rash and negligent manner, hit the scooter, on account of the same claimant-Sudhanshu Bisht and Pramod Lohni sustained injuries on their person. The claimant by adducing the evidence before the Tribunal has established the aspect of the accident and the Tribunal on the basis of evidence available on record came to the conclusion that on 26-6-2003 at about 12.30 in the night there was a collision between truck and scooter and in this accident claimant-Sudhanshu Bisht as well as Pramod Lohni sustained grievous injuries on their person. Therefore, the factum of accident is established.

11. Learned Counsel for Appellant-insurance company has submitted before me that learned Tribunal did not consider the aspect of contributory negligence although it was pleaded by the insurance company in the written statement. He has also invited my attention towards issue Nos. 1 and 2 which are indicative of this factor that it is a case of contributory negligence. He has further submitted that learned Tribunal has fell in error by ignoring the aspect of contributory negligence although it is established from the evidence on record.

12. Learned Counsel for claimants as well as Respondent No. 5- insurer of Scooter No. UA-04A/1666 have submitted that learned Tribunal has recorded a categorical finding that the truck was driving at a speed of 80 Kms. and with rash and negligence. They have further submitted that the evidence with regard to rash and negligence on the part of driver of scooter is not available on record, therefore, it cannot be assessed that driver of scooter i.e. Sudhanshu Bisht was rash and negligent at the time of accident and finding recorded by the Tribunal is absolutely justified.

13. In order to decide the question of contributory negligence, I will firstly have to take into consideration the dictum of "*res ipsa loquitur*". It is an admitted case that both the vehicles at the time of accident were coming from opposite direction to each other. It is a midnight accident. It is not the case of claimant that truck driver did not lit the head light of the truck and driver of scooter could not therefore see the truck from a longer distance. The evidence further does not indicate that there is a blind turn at the place of accident. It is also not the case of claimant that driver of scooter did not have any occasion to see the truck coming from opposite direction from a longer distance. It is thus quite clear that driver of scooter had sufficient opportunity to see the truck coming from opposite direction from a longer distance. Had the driver of scooter been vigilant at the time of accident, he could have very well avoided the same, but the circumstances available on record clearly indicate towards this aspect that driver of scooter had also contributed the negligence in this case. The same rule applies to the driver of truck also. The truck being a bigger vehicle must run on highways with care and caution. The driver of truck had also sufficient opportunity to see the scooter coming from opposite direction from a reasonable longer distance and in case, if the driver of truck would have been vigilant he also could have avoided the accident. The rash and negligence on the part of

driver of truck cannot be overlooked in any manner.

14. Now it is to be seen as to what should be the proportion of rash and negligence on the part of drivers of vehicles involved in the accident.

15. As I have already observed above that scooter is a smaller vehicle. Although the driver of scooter had contributed the negligence for causing this accident, but his percentage in contributing the negligence would be certainly on lesser side, while the percentage on the part of driver of truck would be on higher side. Keeping in view the circumstances of this case, I come to the conclusion that rash and negligence on the part of truck driver is 70%, while rest of rash and negligence of 30% would be on the part of scooter driver.

16. Learned Counsel for Appellant-insurance company has further submitted that claimant- Sudhanshu Bisht in this case was aged about 32 years at the time of accident and on the basis of evidence adduced by the claimant-injured before the Tribunal he is considered to be disabled upto an extent of 100% on the basis of certificate filed by him. As far as percentage in the disablement of injured is concerned, I do not find any reason to disbelieve this aspect that injured- Sudhanshu Bisht suffered disability upto an extent of 100% and the Tribunal appears to be justified in considering the disability of the injured upto an extent of 100%. As far as multiplier of "17" adopted by the Tribunal is concerned, the same appears to be absolutely on higher side keeping in view the age of claimant-injured Sudhanshu Bisht. In view of the latest pronouncement of the Hon"ble Apex Court given in the case of Tamil Nadu State Transport Corporation Ltd. v. S. Rajpriya and Ors., reported in 2005 (4) SCC 87, The Managing Director, TNSTC v. Sripriya and Ors., reported in 2007(5) Sup 301, New India Assurance Co. Ltd. v. Kalpana (Smt.) and Ors. reported in (2007) 2 SCC 94 and Laxmi Devi and Ors. v. Mohammad Tabbar and Anr., reported in 2008 UAD 587, the multiplier in this case cannot travel more than 14 in any case. In case, if the multiplier of "14" is adopted on the income of injured- Sudhanshu Bisht, then the amount of compensation comes to Rs. 36,000 x 14 = Rs. 5,04,000. The Tribunal has assessed the annual income of claimant- Sudhanshu Bisht at Rs. 36,000/- on the basis of bill-book (paper No. 33C/2 to 3) submitted by him and I do not find any ground to disbelieve the same.

17. The Tribunal also awarded a sum of Rs. 1,50,000/- for expenses on medical treatment of claimant which appears to be justified. The Tribunal has further awarded a sum of Rs. 15,000/- for pain and suffering which also appears to be justified. Thus, the total amount of compensation comes to Rs. 504000 + Rs. 150000 + Rs. 15000 = Rs. 6,69,000/-.

18. Now it is to be seen as to how much amount claimant-Sudhanshu Bisht is entitled to get, as compensation in the light of evidence available on record. As I have already discussed above that the rash and negligence on the part of driver of scooter is 30%, while it is 70% on the part of truck driver. The scooter in question was insured with the New India Assurance Co. Ltd. at the time of

accident and insurance policy paper has also been filed by the owner of scooter before the Tribunal which indicates that scooter in question was insured with The New India Assurance Co. Ltd. at the time of accident. In this case, the injured-Sudhanshu Bisht himself was driving the scooter at the time of accident and thus the insurance company of scooter i.e. The New India Assurance Co. Ltd. is not liable to pay the amount of compensation on account of own rash and negligence on the part of injured-scooterist himself. I am, therefore, of the view that claimant- Sudhanshu Bisht is entitled to get a sum of Rs. 6,69,000 - Rs. $6,69,000 \times 30\% = \text{Rs. } 4,68,3000/-$ only as compensation.

19. The amount so awarded in favour of claimant shall be paid by the Appellant-National Insurance Company Ltd. (insurer of truck in question) which is upto an extent of 70%. The New India Assurance Co. Ltd., who is the insurer of scooter, would thus not be liable to pay any amount of compensation to the claimant, who himself is the responsible for rash and negligence driving of scooterist at the time of accident.

20. For the reasons stated above, the appeal is liable to be partly allowed.

21. Accordingly, the appeal is partly allowed. The impugned judgment and award dated 9-5-2006 passed by MACT, Nainital, in MACP No. 139 of 2004, is modified to the extent that claimant is entitled for a sum of Rs. 4,68,300/- (Four Lacs Sixty Eight Thousand Three Hundred only) as compensation, instead of Rs. 7,77,000?- as awarded by the Tribunal, along with interest of 6% per annum, instead of conditional interest awarded by the Tribunal.

22. The statutory amount deposited by the Appellant before this Court be remitted to the Tribunal concerned.