

(2006) 04 UK CK 0040
In the Uttarakhand High Court

National Insurance Company Limited	Vs	APPELLANT
Dinesh Kumar Arora and Others		RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2007) 2 ACC 807 : (2006) 3 UC 1798 : (2006) 2 UD 122

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 18.10.2002, passed by the Motor Accident Claims Tribunal, Tehri Garhwal (in short the Tribunal) in Motor Accident Claim Petition No. 5 of 1998, Dinesh Kumar Arora v. Jabar Singh and Ors. whereby compensation of Rs. 1,20,000 has been awarded in favour of the claimant along with interest @ 9% per annum from the date of claim petition till the date of payment against the Insurance Company-appellant.

2. Relevant facts are that claimant Dinesh Kumar Arora filed claim petition for compensation of Rs. 3,42,000 for the injuries suffered by him on 14.7.1997 due to rash and negligent driving of the Commander Jeep Taxi No. UP 07C-2125 by its driver in the accident which occurred near Gholapani in village Dagar. Due to the accidental injuries, the claimant was treated in different hospitals and incurred expenses on various counts. The claim petition was filed against the driver, owner and the insurer of the vehicle. The driver and owner of the vehicle filed their written statements separately and contested the case. The accident was admitted but it was asserted that due to technical failure of the vehicle the accident occurred. The liability to pay compensation rests upon the insurer of the vehicle. The appellant-Insurance Company also filed its written statement and admitted insurance of the vehicle. The validity of driving licence of the driver was challenged as well as valid registration.

3. The Tribunal framed necessary issues in the case and on the basis of the

evidence led by the parties decided the issues in favour of the claimant and it has been held on the point of validity of driving licence that the Insurance Company has not led any evidence to show that the driver was not having a valid driving licence. The Tribunal has decided the issue against the Insurance Company.

4. In this appeal, the impugned award has been assailed mainly on the point of quantum of award. A ground of overloading was also taken by the appellant to show violation of policy condition. The ground of overloading of the vehicle was not at all pressed by the appellant at the time of framing of issues before the Tribunal. The appellant has filed copy of the written statement with the memo of appeal. I have gone through the averments made in the written statement. No such plea of overloading of the vehicle was taken by the insurer in its written statement. The validity of driving licence was challenged. Moreover, in the proceedings the Insurance Company has led any evidence to substantiate its contention regarding overloading. Therefore, the ground of overloading of vehicle is misconceived.

5. It may be mentioned that the Insurance Company has not obtained permission of the 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 Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."

6. I have heard submission of the learned Counsel for the appellant-Insurance Company and perused the entire material on record.

7. In the course of argument, the learned Counsel for the appellant has submitted that the award of interest @ 9% per annum from the date of filing of claim petition is erroneous. It was pointed out that initially the claim petition was dismissed for default on 25.5.1998, which was restored subsequently on 23.12.2000. The learned Counsel for the Insurance Company urged that considering the facts and circumstances of the case as well as in view of the Apex Court judgment in the case of United India Insurance Co. Ltd. etc. etc. v. Patricia Jean Mahajan and Ors. etc. etc. 11 (2002) ACC 460 (SC) : 2002 (2) ACJ 100 SC the rate of interest awarded by the Tribunal be reduced suitably.

8. Considering the fact that in the course of proceedings before the Tribunal the

petitioner was not interested in prosecution of his claim and the petition was initially in default and considering the decline in the rate of interest, I am of the view that the ends of justice will be served by awarding the simple interest @ 6% per annum instead of 9% per annum from the date of petition till the date of payment. This appeal deserves to be partly allowed on this score.

9. Accordingly, the appeal is partly allowed. The claimant shall be entitled to compensation of Rs. 1,20,000 along with simple interest @ 6% per annum instead of 9% per annum as held by the Tribunal. To this extent the impugned order stands modified. No order as to costs.

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