(2006) 05 UK CK 0013

In the Uttarakhand High Court

Case No : A.O. No. 1442 of 2001

National Insurance Company Limited — APPELLANT

Vs

Virendra Kumar Saxena and Others — RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149(2), 158(6), 170, 173

Citation : (2007) 1 UC 132

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

Bench : Single Bench

Advocate : Prabhat Pande, for the Appellant; S.K. Mandal and Rajesh Joshi, holding brief of T.A. Khan, for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Verma, J.—learned Counsel for the Insurance Company-Appellant filed copy of the Insurance Policy, which is taken on record.

2. This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short the Act) is directed against the judgment and award dated 01-5-2001, passed by the Motor Accident Claims Tribunal/III Fast Track Court, Nainital (in short the Tribunal) in Motor Accident Claim Petition No. 39 of 1997, Virendra Kumar Saxena v. Abdul Aziz and Ors. whereby compensation of Rs. 2,00,000/-has been awarded in favour of the claimant along with interest @ 9%. A rider of penal interest @ 12% per annum from the date of claim petition till payment was also put against the Insurance Company-Appellant in case the payment is not made within a period of one month.

3. Relevant facts are that claimant Virendra Kumar sustained grievous injuries in a vehicular accident involving Truck No. UGP-4416 on 28-12-1989 due to rash and negligent driving by its driver. It was alleged that the claimant was travelling alongwith his goods loaded on the truck. When the truck reached near village Matkota, within Police Station Lalkuan, it turned over with the result, the injured

claimant suffered injuries and he was taken to Civil Hospital Haldwani and thereafter, he was referred to Bareilly Hospital and he had undergone operation of his leg. Ultimately, the injured became permanently disabled and claimed compensation amounting to Rs. 2,00,000/-on different counts.

4. The Opposite Party No. 1 Aziz Ahmad, who was alleged to be custodian of the truck on the date of accident did not contest the claim petition despite service of summons.

5. The O.P. No. 2, Mohd. Ahmad, who is registered owner of the truck filed his written statement 40-Kha and contested the claim petition asserting that he is the owner of the truck and the vehicle was registered in his name and not of Abdul Majid. According to him, the truck was duly insured with the Appellant-Insurance Company. Quantum of compensation is excessive and the compensation, if any, is liable to be paid by the insurance company.

6. The Insurance Company-Appellant contested the claim petition contending that no information of the accident was given to him as provided u/s 158(6) of the Act. It was also pleaded that the injured was travelling by the goods vehicle as non-fair paying passenger, therefore, the insurer is not liable for compensation. It was also asserted that the owner is required to satisfy the tribunal that there was no violation of terms and conditions of Policy and the owner was having all valid papers. It was challenged that the petition is bad for non-joinder of driver of the vehicle.

7. The 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 ill-fated truck. Regarding violation of policy conditions, the Tribunal has held that the Insurance Company could not prove violation of policy conditions or that the driving licence of the driver was not a valid one. The Tribunal has held that the injured was the owner of the goods being carried by the truck in question. It was, therefore, held that the Insurance Company was liable to pay compensation. The Tribunal further held that the truck was duly insured with the National Insurance Company on the date of accident and it had paid compensation to the owner of the truck. Ultimately, the claimant was awarded compensation of Rs. 2,00,000/-as compensation payable by the Insurance Company-Appellant.

8. In this appeal, the impugned award has been assailed mainly on the ground that the claim petition was barred by limitation; that the review of the judgment dated 17-8-1995 was also not maintainable and that there had been violation of policy conditions. Panel rate of interest awarded by the Tribunal as well as quantum of compensation have also been questioned.

9. In the course of arguments, no arguments were advanced on the first two grounds as to how the claim petition was barred by limitation and on the maintainability of review application. The learned Tribunal had rightly recalled the

earlier order passed by the Tribunal holding the claim petition as barred by time. Moreover, it may be mentioned that the bar of limitation in filing the claim petition has already been taken away from the Act. Had the Appellant been aggrieved by the order dated 14-2-1997 whereby the earlier order dated 17-8-1995 was recalled, it was open to the Appellant to have challenged that order well in time, but it did not choose the proper forum, rather participated in the proceedings before the Tribunal. Therefore, it does not lie in the mouth of the Appellant to take this stand.

10. Now the only question to be determined in this appeal is whether there had been violation of policy conditions or not and whether the Tribunal was justified in awarding penal interest at the enhanced rate of interest already awarded by it as well as quantum of compensation.

11. So far as the questioning on the point of quantum of compensation is concerned, 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 challenged 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 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".

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

13. The learned Counsel for the Appellant has submitted that it was not proved in the case that the truck driver was having a valid driving licence thereby the policy condition was violated. This argument is a lame stand on the part of the Appellant in view of the law laid down by the Apex Court in the case of Punam Devi and Another Vs. Divisional Manager, New India Assurance Co. Ltd. and Others, wherein it was held that "Motor Accident-Insurance company neither pleading nor leading evidence that the offending driver had no licence-Claims Tribunal awarding compensation-Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is u/s 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle-Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal." In the case at hand, the claimant filed Photostat copies of the driving licence (paper No. 25-C/117) on record, but the Appellant could not

adduce any evidence that this document is not a genuine one or forged. The contention of the Appellant on this score is not at all tenable.

14. It has been vehemently argued 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 the 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 28-12-1989. The Appellant-Insurance Company itself has filed copy of the Insurance Policy before this Court. A perusal of the Insurance Policy goes to show that the Insurance Company had undertaken liability to cover the third party risk upto Rs. 3,00,000/-. The learned Tribunal has recorded a clear cut finding that the injured was the owner of the goods being carried in the truck in question. This fact has not been challenged in this appeal nor any argument was advanced that the injured was not the owner of the goods. Therefore, on the face of the Insurance Policy, it is established that the insurer was liable to pay the compensation to the extent of Rs. 3,00,000/-.

15. Now, the only question is whether the learned Tribunal was justified in awarding the penal rate of interest in default of non-payment of compensation within the stipulated time. In this case, the claim petition was decreed for compensation of Rs. 2,00,000/-along with interest @ 9% per annum from the date of filing of claim petition till payment. It may be mentioned that the award of interest on the amount of compensation is meant for putting pressure on the person liable to make payment and this power of awarding interest is discretionary power of the Tribunal and once the Tribunal had exercised its discretion, it has no power to award penal rate of interest from the retrospective date. I am fortified in my view by the Apex Court judgment in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, , wherein it has been observed that "Penal rate of interest-Whether can be awarded in case of default in payment of compensation-Held, awarding of retrospective enhancement of interest for default amounts to imposition of penalty which is neither statutorily envisaged nor prescribed-Once discretion has been exercised by the Tribunal awarding simple interest, there is no scope for retrospective enhancement-But insurer cannot withhold the awarded amount indefinitely-On facts, interest @ 9% per annum directed to be paid on Rs. 50,000 within three months."

16. In view of the discussion aforesaid, the appeal preferred by the Insurance Company is liable to be partly allowed in so far as the award of penal rate of interest by the Tribunal is concerned. The claimant shall be entitled to the simple interest @ 9% per annum on the compensation amount from the date of claim petition till payment. The impugned order is modified to this extent alone.

17. The appeal is partly allowed. The impugned judgment and award dated 1-5-2001 stands modified to be above extent. The claimant shall be entitled to the interest on the compensation awarded at the rate of 9% per annum from the

date of filing of claim petition till payment instead of 12%. No order as to costs.

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

