(2013) 03 UK CK 0058

In the Uttarakhand High Court

Case No : Appeal From Order No. 504 of 2006

National Insurance Company Ltd. APPELLANT

Vs

Asifa RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2014) ACJ 1524 : (2014) 2 UC 818

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

Brahma Singh Verma, J.—This appeal, u/s. 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 25.5.2006 passed by the Motor Accident Claims Tribunal/Additional District Judge/F.T.C., Haldwani, District Nainital in M.A.C. Case No. 111/2005, whereby the claim petition was allowed and the Insurance Company was directed to pay Rs. 8,73,671/- as compensation along with interest @ 9% to the claimants from the date of filing the claim petition till the actual payment. Out of the awarded amount, Rs. 2,00,000/- was directed to pay to the claimant No. 2.

2. Brief facts of the case are that claimant-respondent No. 1 is owner/insured of Indigo Car No. UA 04 B/2729. On 16.4.2005, her husband Ibney Hassan was driving the said car and was coming from Bhimtal to Haldwani. At about 10:00 P.M., when the car reached at Chanda Devi, an animal came on the road and the vehicle become uncontrolled and fell down into a ditch. The driver of the car Ibney Hassan received fatal injuries and died. Claimant No. 1 is wife and claimant No. 2 is son of deceased. The claimants filed claim petition for a sum of Rs. 20,00,000/-.

3. The opposite party, National Insurance Company Ltd., filed its written statement denying the contents of the claim petition. In additional pleas, it has been stated that the alleged accident had taken place on account of rash and negligent driving of deceased himself. The deceased was also not having valid driving licence at the time of accident. Hence, the claim petition is liable to be

dismissed.

4. The learned tribunal, on the basis of pleadings of parties, framed following issues for consideration:-

i) Whether the deceased had died due to the injuries sustained by him in a car accident occurred on 16.04.2005 on 30.4.2005 at Chanda Devi near Bhimtal Road?

ii) Whether the alleged accident had occurred due to own negligence of the deceased and whether the Insurance Company is not liable to pay compensation?

iii) To what amount of compensation, if any, are the claimants entitled?

5. Issue Nos. 1 and 2 were decided together and it has been held by the Tribunal that suddenly a cow came in front of the car and because of technical fault the car fell down into a ditch and the deceased received injuries resulting his death and that the alleged accident had not occurred due to negligence of the deceased.

6. On issue No. 3, it has been held that the vehicle was insured and the deceased was having a valid driving licence. On the point of compensation, the compensation was awarded on the basis of income of the deceased treating the deceased as third party.

7. The learned tribunal after hearing the parties and considering the entire evidence on record, allowed the claim petition for a sum of Rs. 8,73,671/- as compensation against the Insurance Company along with interest @ 9% per annum from the date of filing the claim petition till the date of actual payment.

8. Feeling aggrieved, the Insurance Company have preferred this appeal.

9. I have heard the learned counsel for the parties and perused the impugned award.

10. The short controversy to be decided in this appeal is as to whether the deceased can be treated third party.

11. Learned counsel for the appellant placed reliance upon the judgment of the Supreme Court in the case of Ningamma and Another Vs. United India Insurance Co. Ltd., wherein it has been held that the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation u/s 163-A.

12. By a perusal of claim petition, it reveals that the claim petition has been filed u/s. 166 r/w section 163-A of the Act, therefore, the claim petition was rightly treated u/s. 166 of the Act by the learned Tribunal. Therefore, this case law cited by the learned counsel is of no help to the appellant-Insurance Company.

13. Learned counsel further placed reliance upon a judgment of this Court in case of The Oriental Insurance Company Ltd. vs. Kumari Ashmita Pant and others, A.O. No. 386 of 2006, decided on 26.12.2008, in which the facts were

similar to the instant case. In that case also, the husband was driving the vehicle of the wife. In that judgment, this Court has held:-

In the instant case, deceased was using the car given to him by his wife for use. He is not covered by the insurance policy taken in terms of the Act, without any special contract. The deceased was not the workman of the owner of the vehicle, therefore, in any case the deceased is not covered under the term ''third party''. I am, therefore, of the view that direction issued by the tribunal by way of impugned judgment and award to pay the amount of compensation to the insurance company, is not tenable in the eye of law.

14. In view of the judgment of this Court (Supra), it is quite clear that the deceased would be treated owner-cum-driver of the vehicle and not a third party.

15. Furthermore, I have also perused the policy also wherein only Rs. 100/- was paid for personal accident coverage by the owner. In view of the fact that the owner had paid premium of Rs. 100/-, as per the conditions of the policy, the policy covers the risk upto Rs. 2,00,000/-. This fact has not been disputed by either of the parties. Therefore, the claimants are only entitled for compensation of Rs. 2,00,000/- as the premium of Rs. 100/- was paid by the insurer in view of Apex Court judgment in case of Dhanraj Vs. New India Assurance Co. Ltd. and Another,

16. As it has been observed earlier in the body of the judgment that deceased cannot be said to be third party, hence, under these circumstances, the insurance company cannot be said to be liable to make the payment of amount of compensation awarded by the Tribunal. The claimants shall only be entitled for the amount for which they have paid premium, i.e., Rs. 2,00,000/-.

17. The tribunal also awarded a sum of Rs. 2,000/- towards funeral expenses and further a sum of Rs. 5,000/- towards loss of consortium. In this way, the total compensation comes to Rs. 2,00,000/- + Rs. 7,000/- = Rs. 2,07,000/-.

18. For the reasons recorded above, the appeal is liable to be partly allowed.

19. The appeal is partly allowed. Impugned judgment and award dated 25.5.2006 passed by the Motor Accident Claims Tribunal/Additional District Judge/ F.T.C., Haldwani, District Nainital in M.A.C. Case No. 111/2005, is set aside. The claimants/appellants are entitled to get a sum of Rs. 2,07,000/- as compensation instead of Rs. 8,73,671/- as has been awarded by the tribunal. The claimants shall also be entitled to get interest @ 6% per annum from the date of filing the petition till the date of actual payment.