
(2008) 08 UK CK 0041

In the Uttarakhand High Court

Case No : Appeal From Order No. 339 of 2007

National Insurance Company Ltd.

APPELLANT

Vs

Dayaram Sharma and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Citation : (2009) 1 UC 643

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

Bench : Single Bench

Advocate : Lalit Belwal, for the Appellant; Pankaj Miglani and Bhuwanesh Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—Parties have agreed that the matter be disposed of finally.

2. This is insurer's appeal against the award dated 05.07.2007 passed by Motor Accident Claims Tribunal/District Judge, Haridwar, in Motor Accident Claim Case No. 73 of 2006.

3. Claimant Daya Ram Sharma, who is father of deceased-Raj Kumar Sharma, claimed compensation of Rs. 15,00,000/- for his death in the motor accident on 21.3.2006, when his motorcycle dashed by offending vehicle bearing Registration No. U.A.07C-7796 resulting in serious injuries to Raj Kumar Sharma, who succumbed to those injuries.

4. The insurer, owner and driver of offending vehicle contested the claim and denied their liability to pay compensation to the claimants. The owner and driver of offending vehicle pleaded that driver of offending vehicle in question was not responsible for the accident and the accident occurred due to own negligence of deceased-motorcyclist himself. The insurer, on the other hand, pleaded that accident was the result of own rash and negligence of deceased and offending vehicle was being plied in breach of insurance conditions, at the time of accident.

5. The claimant examined himself as PW-1 and Sri Dev Dutt Dhiman as PW-2 in support of his case, whereas driver of vehicle No. U.A. 07C-7796 examined himself as DW-1, in rebuttal. The owner and insurer, however, did not examine any witness.

6. The Tribunal on the basis of pleadings of the 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. 2,00,000/- in favour of claimant, against opposite party No. 3-National Insurance Company Ltd., vide judgment and award dated 05.07.2007. The Tribunal further directed that opposite party No. 3-insurance company shall have the recoverable rights to recover the entire amount of compensation from owner of vehicle in question.

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

8. Heard Sri Lalit Belwal, learned Counsel for Appellant-insurance company, Sri Pankaj Miglani, Learned Counsel for Respondent No. 1, Sri Bhuwanesh Joshi, Learned Counsel for Respondent No. 3 and perused the record.

9. Learned Counsel for Appellant has vehemently argued that learned Tribunal has held that Appellant-insurance company may recover the amount of compensation from the owner of vehicle but has failed to visualize that Appellant-insurance company cannot be asked to pay amount of compensation in case there is no liability of Appellant-insurance company. He has further submitted that amount of compensation of Rs. 2,00,000/- awarded by the Tribunal is excessive.

10. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased-Raj Kumar Sharma died on account of the injuries sustained by him in the accident; the accident occurred due to rash and negligence of driver of offending vehicle No. U.A. 07C-7796; and, as the offending vehicle was insured with National Insurance Company Limited, the insurance company was liable to pay compensation to the claimant. Perusal of record reveals that the said findings do not require any interference. The reasons recorded by the Tribunal are cogent and clear, I am completely in agreement with the findings recorded by the Tribunal with regard to rash and negligent driving of offending vehicle at the time of accident.

11. As far as issues framed by Tribunal with regard to possession of valid driving licence and valid papers of vehicle, at the time of accident, and claim petition is bad due to non-joinder of insurer of motorcycle, are concerned, the Tribunal recorded a categorical finding that since the accident in question was the result of rash and negligent driving of driver of vehicle No. U.A. 07C-7796, therefore the claim petition is not bad due to non-joinder of insurer of motorcycle as party.

The insurance company has taken a specific plea in its written statement that vehicle in question was being plied in breach of insurance conditions, but no evidence was adduced before the Tribunal by the insurance company in support of his submission. The insurance company also taken a plea in its written statement that vehicle in question was being plied in breach of insurance conditions at the time of accident. The insurance company has admitted this fact in its written statement that vehicle No. U.A. 07C-7796 was insured with it on the date of accident and its insurance was valid w.e.f. 14.10.2005 to 13.10.2006. I do not find any illegality in the above findings recorded by the Tribunal and same deserve to be confirmed.

12. As far as amount of compensation to be awarded in favour of claimant is concerned, it is an admitted fact that deceased was unmarried and his father was employed in job and was not dependent upon his son (deceased), but it is true that claimant's son-deceased Raj Kumar Sharma died in the accident. The Tribunal keeping in view the facts and circumstances of the case awarded, in all, a sum of Rs. 2,00,000/- as compensation to the claimant. I am, therefore, of the opinion that the Tribunal has not committed any illegality in calculating the amount of compensation as Rs. 2,00,000/- and same does not require any interference. Rest of the findings recorded by the Tribunal relating to the aspect that the insurance company shall have the recoverable rights to recover the amount of compensation from the owner of vehicle, also appears to be justified and is not to be disturbed.

13. For the reasons stated above, the appeal lacks merit and is liable to be dismissed.

14. The appeal is accordingly dismissed. The impugned judgment and award dated 05.07.2007 is hereby confirmed.

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