(2009) 02 UK CK 0010

In the Uttarakhand High Court

National Insurance Company Ltd. APPELLANT

Vs

Smt. Anita Devi and Others RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 2 UC 971 : (2009) 1 UD 445

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

Bench : Single Bench

Judgement

B.C. Kandpal, A.C.J.

1. This appeal, u/s 173 of Motor Vehicles Act, 1988, has been preferred by the appellant i.e. National Insurance Company Limited, who is the insurer of offending vehicle Maruti Car Alto No. U.A.01/5163, against the judgment and award dated 28.11.2006 passed by Motor Accident Claims Tribunal/District Judge, Bageshwar in M.A.C.T. Case No. 14/2005, Smt. Anita Devi v. Sri Dhirendra Singh Martolia and Ors..

2. Brief facts of the case, as narrated in the claim petition, are that on 12.8.2005 deceased-Anand Singh was going from Almora to his village Palsau in Maruti Car Alto No. U.A.01/5163 and when the said vehicle reached at Chidang bend, District Bageshwar, it met with an accident, in which deceased-Anand Singh sustained injuries and ultimately he died. At the time of accident deceased was 30 years of age and was working as Teacher in Higher Secondary School Chaura and was getting salary of Rs. 6000/- per month from the said job.

3. The claimant thus claimed a sum of Rs. 9,14,000/- as compensation against opposite parties.

4. Opposite party No. 1 filed his written statement admitting therein the factum of accident and stated that accident did not take place on account of rash and negligence of driver of offending vehicle in question. It has also been stated that amount of compensation as claimed by claimant is on higher side. The liability to

pay the compensation, if any, is of opposite party No. 4- National Insurance Co. Ltd., from whom the offending vehicle in question was insured at the time of accident.

5. Opposite parties No. 2 and 3 are devar and mother-in-law of the claimant, who claimed the compensation from opposite party No. 1 admitting the factum of accident.

6. Opposite party No. 4-National Insurance Co. Ltd. filed its written statement stating therein that vehicle in question was not being plied with valid papers and valid driving licence on the date of accident. It has also been stated that claimant claimed an exorbitant amount of compensation on baseless facts and claim petition was filed in collusion with claimant and owner of vehicle in question, which is liable to be dismissed.

7. The learned Tribunal on the basis of pleadings adduced by the parties framed necessary issues. Parties led oral as well as documentary evidence in support of their case.

8. 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. 4,42,000/- against opposite party No. 4-National Insurance Co. Ltd. The Tribunal also directed National Insurance Co. Ltd. i.e. the appellant to deposit the awarded amount to the claimant, vide judgment and award dated 28.11.2006.

9. Feeling aggrieved by the aforesaid impugned judgment and award, the appellant i.e. National Insurance Co. Ltd. has preferred the present appeal before this Court.

10. Heard Sri D.S. Patni, learned Counsel for the appellant, Sri B.S. Adhikari, learned Counsel for claimant-respondent No. 1 and perused the record.

11. None has appeared on behalf of owner of vehicle in question (respondent No. 2) inspite of sufficient service of the notice. The office report shows that respondent No. 2 was served personally, but neither any counsel on behalf of respondent No. 2 has appeared nor respondent No. 2 has come up before this Court in order to defend his case.

12. As far as factum of accident is concerned, The Tribunal while deciding issue No. 1 has specifically discussed the evidence adduced by the parties. The conclusion drawn by the Tribunal that the offending vehicle was being driven rashly and negligently by its driver at the time of accident, due to which it met with an accident and Anand Singh, who was travelling in the vehicle, sustained injuries and ultimately he died. I do not find any justification in disbelieving the finding recorded by the Tribunal with regard to factum of accident as well as rash and negligence on the part of driver of the offending vehicle in question.

13. The Tribunal has further awarded a sum of Rs. 4,42,000/- as compensation

in the case. The principle adopted by the Tribunal in awarding the amount of compensation appears to be justified. I do not find any ground in the same for interference.

14. As far as liability to pay the amount of compensation is concerned, the insurance company during the course of appeal has moved an application for adducing additional evidence. The insurance company, along with application and affidavit for filing the additional evidence, has placed IMT.16.Personal Accident To Unnamed Passengers Other Than Insured And The Paid Driver And Cleaner. Learned Counsel for the appellant has submitted that although policy was placed before the Tribunal but the relevant provisions under India Motor Tariff contained in IMT.16 could not be placed and in view of the provisions contained in IMT.16, it will be quite clear that car involved in the accident is a private car. The owner of vehicle in this case has paid a sum of Rs. 200/- as additional premium and in view of the facts of the present case the liability of the insurance company is limited to Rs. 1 Lac only per person.

15. Learned Counsel for claimant/respondent No. 1 has submitted that this plea was not taken by the insurance company in its written statement filed before the Tribunal, therefore, the appellant cannot raise this plea before this Court.

16. I do not find any force in the argument advanced by learned Counsel for claimant- respondent No. 1.

17. It is not disputed that deceased was travelling in private car and additional premium of Rs. 200/- was paid by the owner of private car involved in the accident. Therefore, in view of the provisions contained in IMT.16, the liability of insurance company thus would be to an extent of Rs. 1 Lac only per person.

18. I am, therefore, of the view that insurance company in this case would be liable to pay the amount of compensation upto an extent of Rs. 1 Lac only along with interest indicated in the impugned judgment and award.

19. As far as remaining amount of compensation awarded by the Tribunal is concerned, the liability to pay the same shall be that of respondent No. 2 who is the owner of offending vehicle in question.

20. The insurance company, therefore, shall deposit the entire awarded amount along with interest indicated in the impugned judgment and award with the Tribunal within a period of two months. The claimant should be entitled to withdraw the awarded amount of compensation. However, the insurance company is given the right of recovery of balance amount (excluding Rs. 1 lac along with interest indicated in the impugned judgment and award) from the owner of vehicle in question. The insurance company shall recover the amount of compensation from owner of vehicle in question in view of the observations made by the Hon''ble Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, .

21. Accordingly, appeal is partly allowed. The impugned judgment and award is

modified to the extent that insurance company shall be liable to pay the amount of compensation to the extent of Rs. 1,00,000/- (Rupees one lac only) along with interest indicated in the impugned judgment and award. However, the insurance company shall pay the entire awarded amount of compensation and shall recover the balance amount of compensation from the owner of vehicle in question in the light of observations made by the Hon''ble Apex Court in the case of Oriental Insurance Company Ltd. v. Nanjappan (supra).

22. The statutory amount deposited by the appellant with this Court be remitted to the Tribunal concerned.