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(2009) 06 UK CK 0028

In the Uttarakhand High Court

National Insurance Company Ltd. APPELLANT

Vs

Sri Chaman Lal and Others RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 165, 173

Citation : (2009) 06 UK CK 0028

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

Bench : Single Bench

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant/National Insurance Company against the judgment and award dated 26.10.2006, passed by Motor Accident Claims Tribunal/District Judge, Dehradun in Motor Accident Claim Case No. 169 of 2000, Chaman Lal v. Rajeev Mangala and Ors.

2. Brief facts of the case are that the claimant/Chaman Lal is the owner of shop No. 80, Kulri Bazar through which he runs the business of general merchant as well as sale of ice-cream and fruit juice etc. in the name and style of M/s Chaman Lal Anil Kumar. On 10.06.2000, at about 01:15 a.m. a Maruti Car bearing registration No. DL6CC/7178 belonging to Rajeev Mangla and driven by Jaswant Singh, rashly and negligently came from Bata side and dashed with the shop of the claimant-Chaman Lal resulting into damage to Softy Machine worth Rs. 1,50,000/- and Slush Machine worth Rs. 1,00,000/-. Besides damages to these two machines, furniture and other articles of the shop worth Rs. 15,600/- also damaged. The claimant lodged the report on 11.06.2000 at about 01:15 p.m. and on the other hand, he has filed the claim petition before the Tribunal for a sum of Rs. 3,70,875.40 as compensation.

3. Thereafter, notices were issued to the opposite parties. Rajeev Mangla (owner of the vehicle) contested the claim petition by filing written statement before the Tribunal on the ground that the driver was not driving the vehicle rashly and negligently. He has further pleaded that on account of sudden appearance of a

cow in front of the car and the driver in order to save the cow met with an accident.

4. In spite of sufficient service of notice, Jaswant Singh - driver of the car neither appeared before the court below not filed any written statement and thus the case proceeded against him ex-parte.

5. The National Insurance Company Ltd./insurer of the vehicle also contested the claim petition by filing written statement before the Tribunal on the ground that the driver was not holding a valid and effective driving licence on the date of accident and the vehicle was being plied in breach of condition of policy and there is a limit of the liability of the Insurance Company to the extent of Rs. 6,000/-. 6. On the basis of the pleadings of the parties, the Tribunal has framed following issues, for consideration:

1. Whether on 10.06.2000 at 01:30 p.m. near Kulri Bazar, Mussoorie, the driver of Maruti Car No. DL6CC/7178 dashed shop No. 80, Kulri Bazar Mussoorie owned by the claimant and damaged the Taylor Ice Cream machine and Ugolini Slush machine etc. on account of rash and negligent driving? If so, its effect?

2. Whether the driver of the offending vehicle had valid and effective driving licence at the time of the accident? If so, its effect?

3. Whether the insured violated the terms and conditions of the policy?

4. Whether the liability of the Insurance Company is limited upto an extent of Rs. 6,000/-?

5. To what amount of compensation the claimant is entitled and from whom?

7. Thereafter, both the parties led evidence in support of their cases. After hearing learned Counsel for the parties and perusing the entire material available on record, the Tribunal decreed the claim petition for a sum of Rs. 1,73,000/- along with interest @ 6% per annum from 26.09.2006 till the date of payment and costs of Rs. 2,000/- vide judgment and award dated 26.10.2006.

8. Feeling aggrieved by the aforesaid judgment and award, the National Insurance Company Ltd/insurer of maruti car No. DL6CC/7178 preferred this appeal before this Court.

9. Heard Sri Bindesh Kumar Gupta, learned Counsel for the appellant, Sri A.Rab, learned Counsel for the respondent No. 1, Sri Davendra Pant, learned Counsel for the respondent No. 2 and perused the record.

10. As far as the factum of accident is concerned, the finding recorded by the Tribunal that the accident took place on account of rash and negligent driving of the driver of the Maruti Car is concerned, that appears to be completely justified and I am in total agreement with the findings recorded by the Tribunal in this regard.

11. As far as the amount of compensation to be awarded in favour of the

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claimant is concerned, the record shows that the Claims Tribunal has awarded a sum of Rs. 1,73,000/- as compensation along with interest @ 6% per annum from 26.09.2006 till the date of payment, but the Tribunal has fell in error in directing the amount of compensation to be paid by the Insurance Company. Although the Tribunal has allowed the claim petition jointly and severely against the owner of the vehicle as well as insurer/Insurance Company/appellant. But the main question to be decided in this case is as to whether the Insurance Company is liable to pay the compensation and upto what extent.

12. It is a case of property damage and the record shows that the vehicle dashed the shop of the claimant breaking outer side of the shop and damaged the Softy Machine and Slush machine and other items kept therein. The Tribunal assessed the damaged and awarded a sum of Rs. 1,73,000/- as compensation. But in order to assess this aspect, the limit of Insurance Company for the payment of the compensation to the claimant, the provisions of Section 147(2) of the Motor Vehicles Act are to be taken into account which reads, as under:

147(2) - Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely-

(a) save as provided in Clause (b), the amount of liability incurred.

(b) in respect of damage to any property of a third party, a limit of rupees six thousand; immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of sub policy whichever is earlier.

13. The aforesaid provision makes it clear that in respect of damage to any property of third party the limit to pay the amount of compensation shall be Rs. 6,000/-. The machine and items kept in the shop do not come within the purview of a ''person'' as the meaning of the ''person'' given in Oxford English Dictionary is ''a living human being''. Further, in Webster''s Third New International Dictionary a ''person'' means - ''an individual human being'', ''a human being as distinguished from an animal or thing'' and ''the individual personality of a human being''.

14. Section 165 of the Motor Vehicles Act says that the State Government by way of notification in the official gazette constitutes the Motor Accident Claim Tribunal for the purpose of the death of, or bodily injury, to persons, arising out of the use of the motor vehicles, or damages to any property of a third party so arising, or both. This aforesaid provision clearly indicates that the Tribunal shall award the compensation in respect of the accident involving the death or bodily injury to a person arising out of the use of the motor vehicle. It further indicates that the compensation shall also be awarded in respect of the accident involving the damages to any property of the third party.

15. In the instant case, the property was kept in the shop belonging to the

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claimants. Therefore, in view of the provision of Section 147(2)(b) of the Motor Vehicles Act, the limit of Insurance Company cannot travel more than Rs. 6,000/- with regard to the damages of any property to third party.

16. Hence, the Tribunal has fell in error in awarding the compensation for a sum of Rs. 1,73,000/- on account of the damages of the property belonging to the claimant/third party and I am of the view that the judgment passed by the Tribunal is liable to be modified to the extent that the Insurance Company is liable to pay the amount of compensation to the claimant for a sum of Rs. 6,000/-. The amount so awarded shall be paid by the Insurance Company along with an interest as indicated in the impugned judgment and award. However, the owner of the offending vehicle - Rajeev Mangla/respondent No. 2 in the appeal and defendant No. 1 in the claim petition before the Tribunal shall be liable to pay rest of the amount to the claimant along with an interest as indicated in the impugned judgment and award.

17. Accordingly, the appeal is partly allowed. The impugned judgment and award dated 26.10.2006 is modified upto the extent that the Insurance Company is liable to pay the amount of compensation to the claimant upto the tune of Rs. 6,000/- only along with the interest as awarded by the Tribunal and rest of the amount shall be paid by the owner/respondent No. 2 - Rajeev Mangla to the claimant along with interest as indicated in the impugned judgment and award.

18. The statutory amount deposited by the appellant before this Court be remitted to the Tribunal concerned.

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