
(2007) 10 UK CK 0025
In the Uttarakhand High Court
Case No : A.O. No. 334 of 2007

National Insurance Company Ltd.

APPELLANT

Vs

Sri Raj Kumar Arora and Others

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2008) 2 UC 1007

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Prabhat Pande, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Sri Prabhat Pande, counsel for the Appellant. This is an appeal filed by the Insurer.

2. By the present A.O. filed u/s 173 of the Motor Vehicles Act, 1988, Appellant has prayed for setting aside the award dated 18-5-2007 passed by the Motor Accident Claims Tribunal/District Judge, Uttarkashi in Motor Accident Claim Case No. 41 of 2006 Raj Kumar Arora and Ors. v. National Insurance Company Ltd. whereby the claimant has been awarded a sum of Rs. 1,52,000/- towards compensation.

3. Briefly stated, a claim petition was filed by the claimant/Respondents being Motor Accident Claim Case No. 41 of 2006 Raj Kumar Arora and Ors. v. National Insurance Company Ltd. claiming a sum of Rs. 9,95,000/- towards compensation.

4. According to the claimants, on 21-8-2005 at about 7.00, Smt. Asha Arora (hereinafter referred to as the deceased) was going to Dhontari from Main Market Uttarkashi by Private Car No. U.A.07J/8326, as soon as she reached near Kutti Bench due to rash and negligent driving of the said car, it became disbalanced and caused accident. In this accident, the deceased received fatal injuries and died, when she was taken to the hospital. At the time of accident,

the deceased was 50 years of age and was earning a sum of Rs. 5,000/- from the business of clothes by the name and style of Asha Clothe Emporium. She is survived by her three children Raj Kumar Arora, Km. Divya Arora (minor) and Km. Kirti Arora (minor).

5. Insurer has contested the claim by filing a written statement stating therein that the deceased was herself the owner of the Car in question, therefore, the Insurer is not liable to indemnify the award. It has further been stated that the accident took place due to own negligence of the deceased. It has further been stated that the Insurer is liable to pay compensation only to the 3rd party and not to the owner of the Car in question. It has further been stated that at the time of accident, the driver of the Car in question was (not) holding valid driving licence and Car in question was being driven unauthorisedly. It has further been stated that at the time of accident, the Vehicle in question was not carrying valid papers and the car in question was being driven in violation of the terms and conditions of the policy and the permit. Further it has been started that the income and age of the deceased has wrongly been mentioned.

6. On the pleadings of the parties, the claims tribunal has framed following issues:

1. 21 - 8 - 2005 7.00 ? ? ? ? ? ? . ? . - 07 - 8326 ? ? ? ? ? ? ? , ? ? ? ? ? , ? ? ? ? ? ? ? ? ? ? ?

2. ? ? . . ? ? ? ? ? ? ? ? ? ? ? ? ? ? ?

3. ? ? ? ? ? ? ? ? ? ? ? ? ? ? ?

8. On behalf of the claimants, Raj Kumar Arora has been examined as P.W.1. Towards the documentary evidence, claimants have filed per list 4 Ga First Information Report Paper No. 7 Ga, copy of the Insurance Cover Note Paper No. 6Ga/1 to 6Ga/2, copy of the Registration Certificate Paper No. 7 Ga, Copy of the Panchayatnama Paper No. 8Ga/1 to 8Ga/2, copy of the Post Mortem Report Paper No. 9Ga/1 to 9Ga/2, copy of the Final Report Paper No. 10 Ga, copy of the Graduation Certificate Paper No. 11 Ga and per list 26 Ga copy of the driving licence Paper No. 27 Ga.

9. While deciding the Issue as to whether on 21-8-2005 at about 7.00 p.m. when Smt. Asha Arora was going to Dhauntari from Main Bazar, Uttarkashi by Maruti Car No. U.A. 07-J-8326, due to rash and negligent driving of the driver of the said Maruti Car an accident took place near Kutti Bend, in which Smt. Asha Arora received grievous injuries and died in the Hospital, claims tribunal has relied upon the statement of P.W.1 Raj Kumar Arora, who has narrated to entire story and copy of the First Information Report. After relying upon the aforesaid documents, the claims tribunal has recorded a finding that due to rash and negligent driving of the driver of the said Car, accident took place in which the deceased received grievous injuries and died in the District Hospital, Uttarkashi during treatment.

10. While deciding the issue as to whether the Car in question was validly insured with the National Insurance Company and further the driver of Car in question was not holding valid driving licence, claims tribunal has relied upon the Photostat copy of the driving licence Paper No. 27 Ga/1, which shows that the same was valid and effective at the time of accident and was renewed upon 29-9-2006. Further the claims tribunal has relied upon the insurance Cover Note Paper No. 6Ga/1-to 6Ga/2, which shows that the same was valid for the period from 8-2-2005 to 7-2-2006 and the accident took place on 21-8-2005. Relying upon the aforesaid documents, the claims tribunal has recorded a finding that at the time of accident the vehicle in question was validly insured and the driver of the vehicle in question was holding a valid driving licence and at the time of accident, Smt. Asha Arora was not driving the car herself. This issue has been decided in favour of the claimant and against the Insurer.

11. While deciding the issue with regard to quantum, the claims tribunal has assessed the income of the deceased as Rs. 15,000/- per annum. Thereafter 1/3rd of the personal expenses has been deducted from the said amount and then, the annual dependency has been worked out to Rs. 10,000/-. The claims tribunal has assessed the age of the deceased as 50 years after relying upon the Post Mortem Report and according to the age of the deceased, multiplier of 13 has been selected. Multiplying the annual dependency with 13, the amount of compensation has been worked out to Rs. 1,30,000/-. Apart from that the claims tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses and Rs. 20,000/- for love and affection and for physical and mental agony. Thus, the claims tribunal has awarded a total sum of Rs. 1,52,000/- towards compensation along with interest @ 6% per annum to be payable by the Appellant.

12. Counsel for the Appellant has submitted that the Appellant is not liable to pay any compensation as per contract in the shape of Insurance Policy and can never be held liable to pay any amount as the Insured herself has died in the accident.

13. Counsel for the Appellant has referred Oriental Insurance Company Ltd. v. Jhumma Saha and Ors. 2007 (2) T.A.C. 12 (S.C.); Dhanraj v. New India Assurance Company Ltd. and Anr. III (2004) ACC 300 (SC), Oriental Insurance Company Ltd. v. Naresh Kumar Agarwal and Anr. III (2007) ACC 769 and United India Insurance Company Ltd. v. Odeti Mallu Bai and Ors. I (1996) ACC 502 (DB). In all the above said cases, the owner himself was driving the vehicle in question and died in the accident while he was driving the vehicle in question.

14. In the case of Dhanraj v. New India Assurance Company Ltd. and Anr. III (2004) ACC 300 (SC), Apex Court has observed as under:

6. Thus, an insurance policy covered the liability incurred by the insured in respect of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does

not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

7. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no liability also.

8. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under heading "Own damage", the words "premium on vehicle and non- electrical accessories" appears. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.

15. Facts of the present case are distinguishable from the aforesaid cases as in the present case, the owner of the car in question was sitting in the car and due to rash and negligence of her driver, she died.

16. Further in the policy additional premium of Rs. 250/- has been paid by the owner for personal accident and for other five persons sitting in the vehicle in addition to premium. The same is quoted below-

Schedule of Premium

B. Liability

Vehicle 500

Total 500

Add

a) Compulsory PA Cover Premium 100.00

b) Additional PA Cover Premium (100000 per person) for 5 person (IMT-16)
250.00

17. In view of the above, since the owner herself was covered under the policy to get compensation as he had paid additional premium and further since she herself was not driving the vehicle in question and the car in question was validly insured, therefore, the claimants will be entitled to get compensation from the Insurance Company.

18. In view of the above, I do not find any infirmity or illegality in the aforesaid award passed by the claims tribunal and the same deserves to be confirmed.

19. Consequently, A.O. is dismissed. No order as to costs.