

(2004) 05 UK CK 0008
In the Uttarakhand High Court

New India Assurance Co.

APPELLANT

Vs

National Insurance Co. and Others

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Citation : (2004) 3 ACC 770

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Judgement

Rajesh Tandon, J.—The present appeal has been filed against the award dated 28th September, 2003 passed by the Motor Accident Claims Tribunal, Hardwar in Estiyak and Ors. v. Ram Prakash and Ors. M.A.C No. 15 of 2001, awarding a sum of Rs. 1,83,500/- as compensation to the respondents-claimants.

2. Briefly stated the facts giving rise to the present appeal are that Akhalakh died in a motor vehicle Accident on 25th November, 2000. According to the claimants deceased was carrying vegetables for sale to Delhi by Truck No. U.R 10-C-8283. The truck was being driven by the deceased himself very consciously and with a moderate speed. When the truck reached near Dayampur Chaupala, P.S. Kankarkheda, District Meerut at about 12.30 in the night, it was collided with another Truck No. UHM 3264 which was being driven by opposite party No. 2 Najmul, rashly and negligently. The deceased and three other persons were succumbed to the injuries sustained in the Accident. The claimants have alleged that the deceased was getting Rs. 4,000/- per month. The claimants claimed a compensation of Rs. 25,07,000/- against the respondents. Truck No. UP 10-C-8283 was insured with National Insurance Company while another Truck No. UHN 3264 was insured with the New India Assurance Co.

3. Opposite party No. 1 Ram Prakash filed his written statement. He is owner of Truck No. UHN 3264. He denied the allegation of rash and negligent driving by the driver of his truck. Opposite party Nos. 2, 3 and 4 also filed their respective written statements and denied the allegations made in the petition by the claimants. They also denied that the Accident took place due to the rash and

negligent driving by the driver of Truck No. UHN 3264.

4. Opposite party No. 5, the National Insurance Company in its written statement has stated that the Accident was taken place due to the rash and negligent driving by the driver of truck No. UP 10-C/8283, hence the insurer of said truck i.e., the National Insurance Company is only liable to pay compensation to the claimants.

5. On the pleadings of the parties the following issues were framed:

(1) Whether Sri Akhalakh died in a motor vehicle Accident on 24/25th November, 2000 at 12.30 a.m. at Dyampur Chaupala bye pass road within P.S. Kankarkheda, District Meerut, due to rash and negligent driving of Truck No. UHN 3264 which collided with Truck No. UP 10-C/8283?

(2) Whether the Accident took place due to rash and negligent driving by the driver of Truck No. UP 10-C-8283?

(3) Whether both the trucks have no valid permit, fitness and registration certificate and their drivers have valid driving licence?

(4) Whether the Accident took place due to over loading of passengers by Truck No. UHN 3264? If so, its effect?

(5) Whether the claimants are entitled to get compensation of Rs. 25,07,000/-? If so, from which of the opposite parties?

6. The learned Motor Accident Claims Tribunal has held that the Accident took place due to rash and negligent driving of Truck No. UHN 3264 due to which Sri Akhalakh had succumbed to the injuries and issue Nos. 1 and 2 were, decided against the opposite parties.

7. The learned Tribunal has further held that both the truck owners having valid insurance and Truck No. UHN 3264 has not violated the terms and conditions of insurance policy. Therefore, issue Nos. 3 and 4 were decided against the Insurance Company.

8. The Tribunal has assessed the annual income of the deceased as Rs. 15,000/- and after deducting one-third of such income which would be used by the deceased on himself, a net pecuniary loss to the claimants was assessed for Rs. 10,000/- per annum. Considering the age of the deceased a multiplier of 17 was used and thus the compensation to the claimants was assessed to Rs. 1,70,000/-. The Tribunal also awarded a sum of Rs. 2,000/- as funeral expenses, Rs. 1,500/- for carrying the dead body of the deceased and Rs. 10,000/- were awarded for mental pain and agony to the claimants. Thus, the Tribunal awarded a total sum of Rs. 1,83,500/- as compensation along with interest @ 8% per annum to the claimants against the New India Assurance Company opposite party No. 3.

9. Being aggrieved by the award, the New India Assurance Company has filed

the present appeal inter alia on the grounds that the findings of the Tribunal are not based on the evidence on record, the Tribunal did not consider that the vehicle No. UHN 3264 was carrying more than the prescribed number of passengers and that the Accident took place due to contributory negligence of both the truck drivers.

10. I have heard the learned Counsel for the parties and have perused the material available on record.

11. The date, time and place of Accident have not been disputed by the parties. It is also admitted/that deceased Akhalakh was succumbed to the injuries sustained in the Accident. P.W. 2 Suresh Chandra is the eye-witness of the Accident. He has stated on oath that he was carrying Vegetables to Delhi by Truck No. U.P. 10 C 8283. The said truck was hit by another Truck No. UHN 3264 near Meerut which was being driven rashly and negligently. He has stated that he lodged report of the Accident with the police. This witness has categorically stated that the Accident occurred due to rash and negligent driving by the driver of Truck No. UHN 3264. On the basis of evidence on record the learned Tribunal has rightly come to the conclusion that the Accident took place due to rash and negligent driving by the driver of Truck No. UHN 3264.

12. The claimants have contended that the deceased was driver of the truck. No documentary evidence has been filed to prove his income. In the absence of any documentary evidence, the annual income of the deceased assessed by the Tribunal as Rs. 15,000/- appears to be just and proper. After deducting one-third of the income of deceased which could be used by him for his own expenses, if he would have been alive, the multiplier of 17 applied by the Tribunal is also just and proper. In my opinion the learned Tribunal has not committed any error in calculating the amount of compensation.

13. The appeal lacks merits and is hereby dismissed with costs.