
(2019) 07 UK CK 0059

In the Uttarakhand High Court

Case No : Appeal From Order No. 219, 366 Of 2010

New India Assurance Co. Ltd & Others

APPELLANT

Vs

Roshan Jahan & Others

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0059

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : M.K. Goyal, G.C. Lakhchaura, Bindesh Kumar Gupta, S.K. Chaudhary

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1) A.O. no. 219 of 2010 is directed against the award dated 19.04.2010, passed by the District Judge / Motor Accident Claims Tribunal, Udham Singh Nagar, in M.A.C. Case No. 162 of 2007, whereby the Tribunal has awarded compensation to the tune of Rs.6,87,000/- to claimant nos. 1 to 6 to be paid by New India Assurance Company Ltd.(appellant herein).

2) A.O. no. 366 of 2010 is directed against the award dated 07.08.2010, passed by the District Judge / Motor Accident Claims Tribunal, Udham Singh Nagar, in M.A.C. case no. 196 of 2007, whereby the Tribunal has awarded compensation to the tune of Rs. 4,55,800/- to claimant nos. 1 and 2 to be paid by New Indian Assurance Company Ltd. (appellant herein).

3) Both the appeals have arisen from a single motor accident which resulted in the death of two persons. Aforementioned appeals have been filed by appellant Insurance company on a limited point of contributory negligence, thus, full facts need not to be narrated for the sake of brevity.

4) Heard learned counsel for the parties and perused the papers brought on record.

5) Brief facts of the case are that Mohd. Raqib and Prem Singh Gahlot were both travelling on 12.03.2007 in a car bearing registration no. DL 2CG 8283 from Kashipur to Jaspur, which was being driven by their friend Sunil Kumar at a normal speed. When the car reached near village Misarwala at about 04:30 P.M., a bus bearing registration no. UP 20A 4547, coming from opposite direction from Jaspur collided with their car head on. The offending bus was being driven by its driver in a very rash and negligent manner and it dashed the car from the wrong side. The driver of the bus fled away from the place of occurrence leaving the bus on the spot. Said incident was witnessed by Rajeev Kumar, Advocate and Alok Sisodia, Advocate. Mohd. Raqib, Sunil Kumar and Prem Singh Gahlot sustained injuries. Whereas Mohd. Raqib died on the spot, Prem Singh Gahlot died on his way to hospital.

6) Claimant / respondent Smt. Roshan Jahan w/o late Mohd. Raqib (Adv.) alleged that the deceased was aged 35 years and was earning Rs.30,000/- per month from his legal profession. She claimed the compensation to the tune of Rs.55,20,000/-. Claimant / respondent Smt. Usha Devi w/o late Prem Singh Gahlot (Adv.) alleged that the deceased was aged 52 years and was earning Rs. 30,000/- per month from his legal profession as well as from agriculture. She claimed the compensation to the tune of Rs.40,00,000/-.

7) The petition was contested by Smt. Nazma, owner of the bus, who filed her written statement in which she stated that she is the owner of the bus bearing registration no. UP 20A 4547. It is also stated that Pappu Lal, driver of the bus, was having a valid driving license and was not driving the bus rashly and negligently. It is further alleged that the owner is not liable to make any payment of compensation and the liability to pay the same, if any, is of the insurance company.

8) New India Assurance Company Ltd. (present appellant) in its written statement denied the allegations in the claim petition. It is pleaded in the written statement that the owner of the bus did not gave the insurance company any information regarding the accident and the driver of the bus was not having a valid driving license at the time of accident. Therefore, it is a case of contributory / compository negligence of the vehicles involved in the accident.

9) On the basis of the pleadings of the parties, following issues were framed by the Motor Accident Claims Tribunal, in both the cases:

1. Whether, the accident dated 12.03.2007 took place due to rash and negligent driving of the driver of bus no. UP 20A 4547 or due to rash and negligent driving on the part of driver of care no. DL 2CG 8283 at Kashipur-Jaspur Road, ahead village Misarwala, P.S. Kashipur, Udham Singh Nagar, which resulted in the death of Mohd. Raqib and Prem Singh Gahlot?

2. Whether, at the time of the accident, the bus driver as well as car driver was not having valid driving licenses? if so, its effect?

3. To what amount of compensation are the claimants entitled, and from whom?

10) On behalf of the claimants, certified copy of the FIR; Postmortem Report of the deceased persons; copy of registration certificate and permit of bus, insurance policy, fitness certificate, license of the bus driver, copy of license of the car driver and other relevant documents were produced.

11) On behalf of the claimants, evidence of prosecution witnesses were recorded. On behalf of the respondents, evidence of defence witnesses were recorded.

12) Prosecution witnesses supported each and every averment made in the claim petition. PW1 Rajiv Chauhan, an eyewitness, stated that the accident took place due to rash and negligent driving on the part of the bus driver. PWs Smt. Roshan Jahan and Smt. Usha Devi have proved that their husbands were Advocates engaged in legal profession, who died in the accident and also proved the contents of their claim petitions.

13) Pappu Lal, driver of the bus, was examined as a defence witness. He stated that he was having a valid driving license and the accident took place due to rash and negligent driving on the part of the driver of the car.

14) The Insurance company (appellant herein) did not produce any document in support of their contention regarding contributory negligence.

15) After recording the evidence and hearing the parties, the Tribunal recorded a finding on issue no. (i) that the claimants' witnesses have proved the factum of rash and negligent driving on the part of the driver of the bus and that the driver of the car was driving the care cautiously. As such, the Tribunal held that the liability lies with the insurer of said bus. It was further found by the Tribunal that the accident in question occurred due to rash and negligent driving by the driver of the bus and not as a result of contributory negligence of the driver of the car and decided the issue in favour of the claimants. Issue no. (iii) was also decided in favour of the claimants.

16) Learned counsel for the appellant(s) would submit that it was a case of head on collision and learned Tribunal has erred in recording the finding that the driver of the bus was driving the bus rashly and negligently due to which the Mohd. Raqib and Prem Singh Gahlot died. It was contended that when in an accident where the car was badly damaged, the liability should be passed on the drivers of both the vehicles.

17) Learned counsel for the appellant placed reliance on the judgment rendered by Hon'ble Apex Court in Tamil Nadu State Transport Corporation Tanjore Vs. Natrajan and others (2003) 6 SCC 137 and submits that in the case (supra) there was head on collision between the two vehicles and the liability in the ratio 50:50 was apportioned. He also submits that the driver of the Tamil Nadu State Transport Corporation himself got injured in the accident and as such he was held liable for accident due to his own negligence. The Hon'ble Apex Court held it to be a case of contributory negligence and the judgment passed by the High

Court fastening the liability for 50% of the compensation amount on the Corporation was set aside. It was also been held that it was not a case of 'no fault liability' and in view of the contributory negligence of the claimant, the insurer of the private bus should be liable for half of the entire amount of compensation.

18) In the present case, the driver of the bus, who was driving the bus rashly and negligently, dashed the car which was being driven by its driver safely and carefully on extreme left. Thus, the ratio of the judgment (supra) is not at all applicable to the facts and circumstances of the present case.

19) Learned counsel for the appellant(s) cited another case law in the case of New India Assurance Co. Ltd. Vs. Smt. N. Senjilaxmi W. [2013 (1) Mh.L.J.] I have gone through said case law. The ratio of said judgment is not applicable to the facts and circumstances of the present case.

20) Learned Tribunal has recorded categorical findings in regard to the age, income and rash and negligent driving on the part of the driver of the offending vehicle insured with the appellant Insurance company, and has awarded just and proper compensation to the claimants along with interest thereon.

21) It is settled position in law that whoever asserts a fact has to prove it. Appellant Insurance company asserted in the written statement that it is a case of head on collision, as such, both the vehicle owners have the composite negligence and so it was a case of composite negligence. Though the appellant Insurance company has asserted said fact in the written statement, but it has completely failed to produce any evidence in support of said assertion. On the other hand, eyewitness Rajiv Kumar has proved the factum of negligence on the part of the bus driver. Therefore, this Court is of the view that the driver of the car was not at fault as he was driving the vehicle on his side safely and cautiously, whereas the driver of the offending bus was driving the bus rashly and negligently and dashed the car which was being driven by its driver safely and cautiously on extreme left.

22) In view of the findings recorded above, the question involved in both the appeals in regard to contributory negligence of the drivers of both the vehicles is answered in favour of the claimants and against the appellant Insurance company.

23) In view of the foregoing discussion, both the appeal fail and are accordingly dismissed. Lower court records be sent back to the Tribunal concerned. No order as to costs.