
(2006) 05 UK CK 0042
In the Uttarakhand High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Kamlesh Sharma and Others		RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 167, 173

Citation : (2007) ACJ 2562

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Heard. Grounds are sufficient to condone the delay. Delay is condoned. The appeal is admitted.

2. This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") is directed against the judgment and award dated 1.2.1999 passed by the Motor Accidents Claims Tribunal/District Judge, Pauri Garhwal (in short "the Tribunal") in Motor Accident Claim Petition No. 60 of 1998, Kamlesh Sharma v. Oriental Insurance Co. Ltd. whereby compensation of Rs. 2,00,000 has been awarded in favour of the claimants against the insurance company, appellant. Rider of interest was also put in case the amount of compensation is not paid within a period of one month.

3. The relevant facts of the case are that the claimants filed a claim petition before the learned Tribunal for compensation of Rs. 20,35,000 in respect of death of Sushil Kumar, husband of the claimant No. 1, aged 25 years and earning Rs. 5,000 per month in a motor vehicle accident, which occurred on 7.4.1998, involving bus No. UP 06-1031 due to negligence on the part of its driver. It is alleged that deceased was busy in repairing the vehicle and he was crushed due to negligent driving. He was rushed to Government Hospital, Kotdwara and from there he was referred to better treatment, but the deceased succumbed to his injuries. The bus was owned by the opposite party No. 2 and it was duly insured

with the appellant insurance company.

4. The owner of the bus, opposite party No. 2, filed its written statement contending therein that the claim has been preferred on wrong facts. It was asserted that the bus was in stationary condition at the workshop. The deceased was carrying out repairs and died due to his own negligence, therefore, liability for compensation cannot be fastened upon owner of the vehicle.

5. The appellant insurance company also contested the case by filing its written statement asserting therein that the claim against the insurer has been filed on wrong fact as no cause of action has arisen to the claimant against the insurer. It was also alleged that the bus was under repairs in the garage and the death of deceased is not covered under the provisions of the Act. Quantum of compensation has also been challenged.

6. On the pleadings of the parties, the learned Tribunal framed necessary issues. After recording the evidence and perusing the same, the Tribunal has held that the occurrence had taken at public place and not inside the workshop. Accordingly, the petition for compensation under the Act was maintainable. It was further held that the driver of the vehicle is not a necessary party. It was also observed by the Tribunal that factum of accident and death of the deceased was the result of rash and negligent act on the part of the driver of the bus. Ultimately, learned Tribunal has decreed the claim petition awarding compensation of Rs. 2,00,000 and found that the vehicle was duly insured, therefore, the insurance company was directed to pay the compensation amount.

7. The impugned judgment and award has been assailed mainly on the ground that the accident occurred inside the workshop/garage and the bus was in stationary position, therefore, the finding of Claims Tribunal to the contrary is not tenable in the eyes of law.

8. I have heard the learned Counsel for the insurance company as well as learned Counsel for the claimants-respondents and have perused the entire material on record including the impugned judgment and award.

9. Learned Counsel for the appellant has contended, firstly, that the claim petition under the provisions of the Motor Vehicles Act was not maintainable and the claim petition ought to have been preferred under the Workmen's Compensation Act. This argument of learned Counsel for the appellant is not acceptable in view of the clear provision of Section 167 of the Act, which provides that it is open to the claimant to file a claim petition either under the provisions of the Motor Vehicles Act or under Workmen's Compensation Act. The only bar is that claim petition cannot be preferred under the provisions of both the Acts. I am fortified in my view by the Apex Court judgment in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , wherein it was held that the objects of the two Acts, i.e., Motor Vehicles Act and Workmen's Compensation Act are not in any way different and both the Acts are to provide compensation to the victims of accidents.

10. Secondly, it was vehemently argued that on the basis of the evidence on record, it has been established that the bus was in stationary position and there was no negligence on the part of the driver as vehicle was not being driven by him. This argument is a very weak stand in view of the evidence available on record. Even if it may be presumed for the sake of argument that the vehicle was in stationary position, even then it does not make any difference. I am fortified in my view by Apex Court judgment in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In that case, the Apex Court has elaborately considered the provisions of Section 92-A and Section 2(18) of Motor Vehicles Act, 1939 and it was held that the word "use" in the context of motor vehicles construed in wider sense to include the period when the vehicle is stationary and not moving. In para 22 it has been observed that the expression "use of a motor vehicle" covers a very wide field, a field more extensive than which might be called traffic use of the motor vehicle and that the use of vehicle is not confined to the periods when it was in motion or was moving and that a vehicle would still be in use even when it was stationary.

11. A bare perusal of the record goes to show that at the time of accident the bus in question was again brought for minor repairs, which were left to be carried in the bus. There is plethora of evidence on record to show that in fact the vehicle was taken away from the workshop two days before the accident and for carrying out minor defects, the bus was brought there again. On this point, there is positive evidence of Sabir who was produced as APW 2 on behalf of the claimants. This witness has deposed on oath that at the time of accident, the bus was standing by the side of the road and it was not inside the workshop. Moreover, soon after the occurrence the F.I.R. was lodged by this witness. It may be noted that in the F.I.R. each and every detail of the accident are not necessary to be mentioned, rather it is meant for taking prompt action by the police in the matter. It is true that in the claim petition, the claimants have mentioned the place of occurrence as Sabir Body Maker, but at the same time it is not disputed that the deceased Sushil Kumar Sharma was employed as mechanic of Sabir Body Maker. In my view, on the ground that the place of occurrence was mentioned workshop of Sabir Body Maker, the entire evidence led from the side of the claimants cannot be thrown out, particularly, when no evidence was led by the appellants to controvert the testimony of Sabir, who is admittedly the proprietor of Sabir Body Maker, where the vehicle was got repaired two days prior to the date of accident. The appellant could not dare to produce the driver of the said vehicle in the witness-box, who was the best witness to contradict the statement of Sabir, APW 2. It is evident from the record that the appellants have not led any reliable and cogent evidence to show that the bus was inside the workshop and not by the side of the road at the time of the accident.

12. Moreover, it is not disputed that the deceased was a mechanic and he was repairing rear lights of the bus in question. Sabir, APW 2, is the eyewitness of the accident and in view of the ocular account of accident as narrated by this

witness, who had lodged the F.I.R. of the occurrence soon after the accident, and as his testimony on the point of rashness and negligence of the driver has remained un-rebutted coupled with the testimony of Kamlesh Sharma, APW 1, who had reached the spot soon after the accident, I am of the view that the learned Tribunal has not committed any infirmity in holding that the accident resulting in the death of the deceased was caused due to rash and negligent driving by the driver of the bus. It may be noted that the genuineness of the F.I.R. was not challenged from the side of the appellants. The appellants have utterly failed either to substantiate its contention that the deceased Sushil Kumar himself was responsible for the fault and negligence on his part or to lead any reliable evidence to contradict the testimony of claimant's witnesses. The contentions are raised by learned Counsel for the appellant insurance company are not acceptable for the reasons detailed above as well as in view of the Apex Court judgments referred to above.

13. Having considered the entire evidence brought on record from all the four corners, I find that the Tribunal has rightly held that the death of the deceased was caused due to negligence on the part of the driver of the vehicle, who negligently started the bus thereby crushing the deceased mechanic under the wheels.

14. In this appeal, the insurance company has not challenged the quantum of compensation, except the penal rate of interest in default of payment at the rate of 18 per cent per annum.

15. In view of the discussion aforesaid, appeal preferred by the insurance company lacks merit and is liable to be dismissed on merit.

16. It was urged by the learned Counsel for the appellant insurance company that the rider of interest at the rate of 18 per cent per annum awarded by the learned Tribunal is highly excessive which may be suitably reduced taking into consideration the declining trend in the present bank rate of interest. Taking into consideration the facts and circumstances of the case and following the ratio of the Apex Court judgment in the case of *The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others*, , on the point of grant of interest, I am of the view that to meet the ends of justice, the claimant shall be entitled to simple interest at the rate of 9 per cent per annum instead of 18 per cent from the date of filing of claim petition till the date of payment. To this extent the impugned order stands modified.

17. The appeal is hereby dismissed on merit. However, the claimants shall be entitled to get simple interest on the compensation amount at the rate of 9 per cent per annum from the date of claim petition till payment. The impugned judgment and award dated 1.2.1999 is modified to that extent. No order as to costs.

18. The amount in deposit with this court, if any, shall be transmitted to the Motor Accidents Claims Tribunal concerned, for being paid to the claimants as

directed by the learned Tribunal.