
(2016) 07 UK CK 0005

In the Uttarakhand High Court

Case No : Appeal From Order No. 18 of 2010

Oriental Insurance Company

APPELLANT

Vs

Ganga Jaisi

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 166

Citation : (2016) 4 ACC 157 : (2017) ACJ 1063 : (2016) 3 TAC 645

Hon'ble Judges : Servesch Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Prabhat Pande, Advocate, for the Appellant; Mr. Yogesh Pacholia, Advocate, for the Claimant/Respondent Nos. 1 to 7

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—The challenge herein is to the judgment and order dated 19.8.2009 rendered by the Motor Accident Claims Tribunal, Rudraprayag, granting the compensation to the tune of Rs. 5.30 lakh to the dependants of Mr. Jai Krishna, deceased.

2. Accident occurred on 11.12.2007 at 7:30 A.M. Deceased was travelling in Truck No. UA-07R-8165, a goods carriage, which skidded off from the road and fell into a ditch causing serious injuries to the driver, conductor as well Mr. Jai Krishna, aged about 38 years, who breathed his last during the course of treatment in the local Community Health Center. The FIR of this accident was lodged by Mr. Indra Singh Gosain R/o Karanprayag, District Chamoli, on 11.12.2007 at 11 A.M. As per the contents of report, the Truck was sent by its owner on 10.12.2007 from Chamoli having loaded with cement and pipes. While it was returning on 11.12.2007 at some time in the morning, it met with the accident. Owner of the vehicle could receive the information at 7:30 A.M., so he immediately lodged the FIR.

3. Claim petition was filed by the widow and six minor children of the deceased

which has been decreed by the Tribunal but the insurance company has resisted such decree on the ground that the vehicle was a goods carriage and Mr. Jai Krishna could not have travelled in such carriage as a gratuitous passenger because Section 146 of the Motor Vehicles Act (hereinafter to be referred as "the Act") mandates every person not to use, a motor vehicle, as a passenger, until and unless such vehicle has been covered under the appropriate policy of insurance for such passenger.

4. On the other hand, learned Counsel on behalf of the claimants/respondents has relied upon the provisions of Section 147 of the Act and vehemently argued that Mr. Jai Krishna was travelling in the truck as an authorised representative of a contractor Mr. Ramesh Sati and was carrying the goods/construction material of his employer and the insurance policy adverts that Rs. 75/- was charged as premium by the insurer towards "non-fare passenger", therefore, in case Mr. Jai Krishna was travelling in the vehicle as "non-fare passenger" in the capacity of a representative of his employer whose goods such carriage was carrying, then the insurer should be made liable.

5. This contention of learned counsel for the claimants runs counter to the contents of the first information report which adverts that the truck was sent by its owner on 10.12.2007 from Chamoli loaded with cement and pipes. It can be discerned that such truck would have been unloaded during the intervening night of 10/11.12.2007 or at the most in the early hours of next day because it has specifically been stated in the first information report that while such vehicle was returning to its original destination viz. Chamoli, then it skidded off the road and no goods was loaded therein at the relevant time. Even if it is believed for a moment that Mr. Jai Krishna travelled in the truck in order to carry the construction material i.e. cement and pipes, then his journey had come to an end after unloading the same. There was no occasion for him to sit again in the vehicle and to reach the place Chamoli on return journey.

6. The Hon"ble Apex Court in the case of "National Insurance Co. Ltd. v. Kaushalya Devi" I (2009) ACC 52 (SC), wherein the deceased, a vegetable vendor, was travelling in a truck for collecting empty vegetable boxes, met with the accident due to rash and negligent driving of the truck, has held that such deceased could not have been accepted to be travelling as owner of the goods but for the purpose of collecting empty boxes only. It was further held that if the deceased was travelling for the purpose other than for which he was entitled to travel in the public carriage, then the insurance company cannot be made liable to pay the compensation.

7. On the other hand, learned counsel on behalf of the claimants has relied upon the judgment rendered by the Division Bench of the Kerala High Court in the case of "Murugan v. Mary & another" decided on 13.11.2008 in MACA No. 638 of 2009. I have gone through this precedent, which, in my view, is not helpful for the claimants/ petitioners because it was based on another Supreme Court judgment "New India Assurance Co. Ltd. v. C.M. Jaya" 2002 ACJ 271 SC,

wherein it was held that "even though statutory liability cannot be more than what is required in the statute itself, there are no provisions in the Act prohibiting the parties from creating a higher liability to cover wider risk. In such cases, the insurer will be bound by the terms of the contract. Therefore, the terms of the contract of insurance will govern the field." The same view was also held by the Hon''ble Apex Court in yet another case "Dr. T.V. Jose v. Chacko P.M." 2001 ACJ 2059 SC. Paragraph No. 16 of judgment of the Kerala High Court specifically makes it clear that the insurance company can be made liable u/s 147 of the Act even after the death of non-fare passenger provided he is travelling in the carriage either as owner of the goods or his authorised representative. If he is neither the owner nor the authorised representative, then the insurance company can be made liable if, by virtue of an agreement/contract, a higher liability is created between the parties.

8. Therefore, the statement of Mr. Ramesh Sati, the employer of Mr. Jai Krishna, admitting the latter to be his employee, is not enough to fasten the liability on the insurance company.

9. For the reasons, as aforesaid, I allow the appeal and set aside the judgment and order, under challenge. Let the amount deposited by the appellant be returned to it along with the interest earned thereon.

10. Amount of statutory deposit lying in this Court be also remitted to the Court below for it being returned to the appellant along with the interest earned thereon.

11. A copy of this judgment along with LCR be transmitted to the Tribunal concerned for compliance.

12. This judgment will not preclude the claimants to approach the appropriate forum, if any, under the Workmen's Compensation Act.