

(2016) 07 UK CK 0011

In the Uttarakhand High Court

Case No : Appeal from Order No.142 of 2011.

Oriental Insurance Company Limited - Appellant @HASH Bachan Singh and another

Date of Decision : 28-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2217

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. V.K. Kohli, Sr. Advocate, assisted by Mr. I.P. Kohli, Advocate, for the Appellant; Mr. N.S. Pundir, Advocate, for the Respondent No. 1; Mr. Sandeep Kothari, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J. - Since all these appeals have arisen out of the judgments granting award in the same accident, so these are being adjudicated by the single verdict, more so, because except the quantum of compensation, rest of the facts and controversy is identical in nature.

2. The accident occurred on 15.03.2010 at 12:15 PM, when the vehicle Max bearing no. UK-09-TA-0135 was travelling from Haridwar to Tehri along with the passengers therein. During the course of journey, in the serpentine hilly roads, the vehicle skidded off from the road and fell down in deep ditch causing injuries to the passengers; some of them either passed away at the spot or succumbed to the injuries at some later point of time. So, the legal representatives of each initiated the Claim Petition before the Tribunal for awarding of the compensation.

3. The accident, insurance cover, valid permit, valid fitness and losing of life of the persons, for whom the petition was instituted, have not been disputed. The whole controversy, which has been strenuously put forth by learned counsel for the insurer, revolves around the fact that although the driving license of the driver was issued on 21.01.2008 with a hill endorsement on 12.08.2009 so he was having a valid driving license at the relevant date, but at the same time, the

condition no.24, as has been delved in the list attached with such permit, issued by the competent officer has been violated by vehicle owner. It contemplates that the vehicle owner will employ a person as a driver on such vehicle, who is the license holder since at least last 5 years to drive the transport vehicle. The date of first issue of driving license was 21.01.2008, hence, the driver Mr. Dev Singh did not complete those five years on the date of accident viz. he was devoid of requisite experience as highlighted in the conditions of permit. So, in such eventuality, the liability should be fastened upon the owner of vehicle instead of insurer.

4. I am unable to agree with the aforesaid contention of learned Senior Counsel of the insurer for the following reasons:-

(i) This condition of the permit wherefor, pre or post acceptance of the vehicle owner is hardly ever taken before issuing the same to him, is wholly ex-parte in nature. He hardly gets any opportunity to go through its conditions before receiving this permit from the competent officer. That apart, the conditions so enumerated, inasmuch as 37 in number, are in additional leaflet, which is the part of such Permit and many of them are formal in nature, inasmuch as to the extent that the permit holder or its driver, shall never be in a position to honour and make compliance of them.

(ii) Even if, this condition is taken into consideration for a moment with its binding effect upon the owner, then he may be answerable to the competent transport authority for its violation and not to the insurance company.

(iii) Whenever the question is to be adjudicated regarding fastening of the liability vis-a-vis to the insured and insurer, only those conditions are relevant, which were the terms settled between them at the time of paying the premium and issuing the policy and such insurance cover note nowhere adumbrates any such stipulation, rather all which is countenanced in the policy is that the vehicle shall be driven by a person holding an effective driving license and who has not been declared incompetent to hold such license. In the case in hand, even the opportunity was granted by the insurance company to drive such vehicle by a Learner License Holder, the nature of the vehicle has been mentioned as "PCV Maxi Cab" bearing registration no.UK-09-TA-0135, meaning thereby, the insurer was well conversant about the vehicle, and its nature, permitting it to be driven even by a learner license holder, much less 5 years experience holder, while in the present controversy, the driver concerned was holding the license from 21.01.2008 with the hill endorsement on 12.08.2009.

(iv) That apart, Constitutional Bench of Hon"ble Apex Court in the case of "National Insurance Company Limited v. Swarn Singh" (2004) 3 SCC 2097, has beautifully delved into the controversy regarding the holding of a valid driving license and it has been held in para nos.42 to 44 of such judgment that: -

42. We may also take note of the fact that whereas in Section 3 the words used are "effective licence", it has been differently worded in Section 149(2) i.e. "

duly licensed". If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 141 of the Act but Section 149 pertains to insurance as regard third party risks.

43. A provision of a statute which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the provisions contained in different expressions are ordinarily construed differently.

44. The words "effective licence" used in Section 3, therefore, in our opinion cannot be imported for subsection (2) of Section 149 of the Motor Vehicles Act. We must also notice that the words "duly licensed" used in sub-section (2) of Section 149 are used in past tense."

5. Now, as regards the dispute on the question of quantum, every petition has its own merits and quantum can vary from case to case, therefore, I take up all these appeals one by one.

6. Appeal from Order No.142 of 2011

In this matter, the claimant was the sole husband Mr. Bacchan Singh and deceased wife Smt. Kailashi Devi lost her life at the age of 60 years. It is a settled proposition of law that the application of multiplier will depend upon the age of the claimants or the deceased as the case may be. The Hon"ble Apex Court, in the case of "Shakti Devi v. New India Insurance Co. Ltd. & another," 2010(2) UD 527, has held that where the age of the claimant is higher than the age of the deceased, then the age of such claimant and not age of the deceased is taken into account for capitalisation of lost dependency. This judgment was rendered by Hon"ble Apex Court taking into consideration all relevant case laws in this regard viz. Sushma Thomas, Trilok Chandra and even Sarla Verma case.

Since, claimant/husband Mr. Bachan Singh has revealed his age to be 62 and, hence, obviously, the multiplier as observed in Sarla Verma Case has to be applied as per his age. There is no concrete proof regarding the income of the deceased, hence on the notional monthly income of Rs. 3,000/- per month, it comes to Rs. 36,000/- per annum.

In my view, half of the amount should have been deducted instead of one-third for the simple reason that the sole claimant is the husband, who otherwise also would not depend upon his wife for his livelihood, therefore, appropriate quantum of compensation would be Rs. 1,26,000/- (Rs.18,000/- per month x 07).

This Court does not want to disturb the amount of Rs. 10,000/-, which has been awarded towards funeral expenses. This way, the quantum of compensation comes to Rs. 1,38,000/-.

I reduce and modify the quantum of compensation from Rs. 2,28,000/- to Rs. 1,38,000/- as has been granted by learned Tribunal.

A.O. No.142 of 2011 stands disposed of accordingly.

7. Appeal from Order No.143 of 2011

In this matter, since, the legal representatives of the deceased were the wife and minor children, hence, the digit of quantum has not been agitated by learned Senior Counsel for the insurer, therefore, the award of Rs. 4,20,000/- is not disturbed by this Court.

Thus, the Appeal (AO No.143 of 2011) is dismissed.

8. Appeal from Order No.144 of 2011

In this appeal, deceased was septuagenarian, an old woman, running in her late 70"s, namely, Shanti Devi. Her age has been disclosed as 75 years. So, this way, the multiplier of "5" should have been applied by the learned Tribunal after deducting one-half on the annual notional income. This way, the quantum of compensation comes to Rs. 90,000/-. Adding Rs. 2,000/-, the total compensation comes to Rs. 92,000/-.

I reduce and modify the quantum of compensation from Rs. 1,22,000/- to Rs. 92,000/- as has been granted by learned Tribunal.

A.O. No.144/2011 is accordingly disposed of.

9. Appeal from Order No.145 of 2011

In this appeal, deceased was Smt. Maheshwari Devi and her age was 53 years. Claimant Mr. Soban Singh is her husband, who has disclosed his age 60 years, so applying the same standards, the multiplier would have been of the "9" digit instead of "11" digit.

By doing so, the compensation comes to Rs. 1,62,000/-. Adding 12,000/- it comes to Rs. 1,74,000/-. The Court reduces and modifies the quantum from Rs. 2,76,000/- to Rs. 1,74,000/-.

A.O. No.145/2011 is also disposed of accordingly.

10. Appeal from Order No.146 of 2011

Deceased was Smt. Sushila Devi and her age has been disclosed to 43 years and the only claimant is her husband. The multiplier of digit "14" has appropriately been applied by the learned Tribunal. It is hereby made clear that she was survived by her husband and four growing children, whose names and age have been disclosed in para no.7 of the Claim Petition, hence the deduction will be ? towards the personal expenses. Therefore, the multiplier of "14" will be applied on the amount of Rs. 24,000/- i.e. ? of the annual notional income. So, the compensation comes to Rs. 3,36,000/-. The amount of Rs. 12,000/-, granted by the Tribunal towards other expenses, is left intact. So, the total amount of compensation is arrived at Rs. 3,48,000/- as awarded by the Tribunal. So, I find no infirmity at the part of the Tribunal.

Therefore, this appeal filed by Insurance Company is dismissed.

The amount of statutory deposit lying in any of these appeals, along with the interest earned thereon, shall be remitted back to the Tribunal concerned forthwith.

The Tribunal concerned is directed to make payment of the award to the claimants as modified by this Court hereinbefore.

Remaining amount if left, shall be returned to the insurance company along with the interest (reckoned in the account of Tribunal) earned thereon.

A copy of this judgment and order along with LCR be sent back to the Tribunal for compliance.