(2016) 12 UK CK 0009

In the Uttarakhand High Court

Case No : Appeal from Order No. 371 of 2010

Oriental Insurance Company Limited APPELLANT

Vs

Sahajahan Parveen RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, Section 166

Citation : (2017) AAC 658

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. V.K. Kohli, Senior Advocate, assisted by Mr. I.P. Kohli, Advocate, for the Appellant; None, for the Respondents

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J.—List has been revised twice and though the Vakalatnama of Mr. S.K. Chaudhary is filed on behalf of the claimants/ respondents 1 to 9, but none turned up on their behalf. No one also appeared for the remaining respondents. It is made clear that sufficient service has been effected on all the respondents. In the circumstances, this Court heard learned Senior Counsel for the appellant/insurance company and proceeded to decide the matter at its own.

2. Challenge herein is to the judgment and order dated 16.8.2010 rendered by the Tribunal in claim petition No. 252/2007, whereby compensation to the tune of Rs. 10,90,200/- to the dependants of the deceased Mumtaz Hasan, who was 24 years old at the relevant time, has been granted. The accident occurred on 3.1.2007 at 12.30 PM when motorcycle borne Mumtaz Hasan was dashed by the TATA Truck No. DL-1M-2190 and during the course carrying him to the hospital at Moradabad, he succumbed to the injuries. His wife Sahajahan Parveen, mother Akbari Begum and seven children presented the claim petition, wherein the compensation was granted by the learned Tribunal, as indicated above.

3. Learned Senior counsel for the insurance company agitated the award firstly on the validity of the driving licence because the driver of the truck Mr. Raghuwar was having the valid driving licence only till 10.8.2006. It was got renewed w.e.f. 20.1.2007 to 19.1.2010, viz. on the date of accident, the driving licence was not validated by the concerned authority. So, the precedent of Hon''ble Apex Court rendered in Ram Babu Tiwari v. United India Insurance Co. Ltd. and Others, 2008 (3) T.A.C. 769 (S.C.), has been relied upon, wherein a Division Bench of Hon''ble Apex Court exonerated the insurance company on the premise that the driver of the offending vehicle failed and neglected to renew his driving licence and the same could be renewed only after the accident. So, the Hon''ble Supreme Court has observed that proviso appended to Section 15(1) of the Motor Vehicles Act clearly states that driving licence shall be renewed with effect from the date of its renewal in event application for renewal of a licence is made more than 30 days after date of its expiry. If the driver was found not having a valid license, then the insurer would not be liable to indemnify the insured.

4. I think the above precedent runs counter to the judgment rendered by a Constitution Bench of the Hon''ble Apex Court in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, wherein the Supreme Court has differentiated the words "effective license" and "duly licensed", as envisaged under Section 149(2) of the Act. Interpreting the applicability of both these sections in cases of accident claims, it was held as under:

"Under the Act holding of a valid driving licence is one of the conditions of the contract of insurance. Driving of a vehicle without a valid licence is an offence. 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 regards third-party risks. A provision of a statute which is penal in nature vis-à-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the expressions contained in different provisions are ordinarily construed differently. The words "effective licence" used in Section 3, therefore cannot be imported into Section 149(2) of the Act. Moreover, the words "duly licensed" used in Section 149(2) are used in the past tense."

5. So, in view of the above law laid down by the Hon''ble Supreme Court, I think that if the driver Raghuwar had held the driving licence notwithstanding its validity till 10.8.2006, then also it cannot be said that he was not a duly licensed person i.e. he shall be deemed to be duly licensed to drive the vehicle, all the same the validity of such licence had expired and it was renewed some time later.

6. Second point agitated by the learned Senior Counsel for the appellant is on the quantum of compensation. Learned Judge of the Tribunal has assessed the income of the deceased on the basis of income tax return of the Assessment Year 2007-08, but such return is not available in the lower court record. Rather, the

income tax returns of the Assessment Year 2005-06 and 2006-07 are available. If the average of both these returns is taken into consideration, then the same comes to Rs. 37,524/-. Had the deceased been alive, he would have spent at least ?th towards his personal expenses. So, after deducting ?th, i.e. Rs. 9381/-, the income is assessed as Rs. 28,143/- per annum. On applying the multiplier of ''14'' on this income, the compensation is calculated as Rs. 3,93,960/-.

7. So far as interest portion is concerned, I think 9 per cent annual interest, as granted by the Tribunal, is on the higher side. Therefore, I reduce it to 6 per cent annual simpliciter to be paid with effect from the date of institution of the claim petition.

8. Impugned award is modified to the extent indicated above. Appeal stands allowed in the aforementioned terms.

9. Registry shall remit the amount of compulsory statutory deposit along with the interest it has earned to the Tribunal concerned. Excess amount, which has been deposited by the appellant insurance company, shall be returned to it along with the interest it has earned. Remaining amount, as modified by this Court, shall be disbursed to the claimants as per their respective shares.

10. Let the LCR be sent back.

