

(2007) 02 UK CK 0005

In the Uttarakhand High Court

Case No : Appeal From Order No. 1298 of 2001

Oriental Insurance Company Ltd.

APPELLANT

Vs

Amit and Others

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(D), 149(2), 95(2)

Citation : (2007) 02 UK CK 0005

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Pankaj Purohit, for the Appellant; R.S. Rawat and Sandeep Tandon, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal u/s 110(D) of the Motor Vehicles Act, 1939, has been filed against the award dated 17-12-1990 passed by the Motor Accidents Claims Tribunal/District Judge, Chamoli (hereinafter referred as Tribunal") in M.A.C. No. 24/1986, whereby the learned Tribunal had awarded a sum of Rs. 3,00,000/- as compensation in lieu of the death of Ashok Akolkar against the Oriental Insurance Company alongwith interest thereon @ 9% per annum from the date of filing of the claim petition till the date of payment.

2. Brief facts of the case are that the claimants-Amit had filed a claim petition before the learned Tribunal alleging therein that on 22-06-1986 his father Ashok Akolkar (deceased) was travelling from Badrinath to Rishikesh in a taxi car No. UGA 8483 alongwith other persons. The taxi met with an accident at about 10AM at Dugbhyavi, which is 12 kilometers away from Karanprayag. The deceased died on the spot. It was further alleged that Ashok Akolkar was working as Assistant Surgeon in the Health Department of Madhya Pradesh and he was getting a sum of Rs. 2600/- p.m. as salary. The deceased was aged about 43 years at the time of accident. The deceased also used to earn Rs. 2000/- p.m. from his private practice. Hence, the claim petition had been preferred by the son of the

deceased.

3. The opposite parties filed their written statements and contested the case. The Respondent No. 2-Ajai Gupta, who was the owner of the taxi, filed his written statement denying therein that the deceased was earning Rs. 2600/- p.m. as salary and Rs. 2000/- p.m. from private practice. It was further alleged that the taxi in question was being plied under the name and style of "Ajai Travels". Narain Singh was the driver of the offending taxi at the time of accident. The offending taxi was booked for Rs. 1900/- for the journey of five persons from Rishikesh to Badrinath. It was further alleged that the driver of the taxi was not rash and negligent at the time of accident and the accident occurred due to heavy fog and rain at the time of accident. It was further alleged that the driver of the offending vehicle was persuaded or forced to overload the vehicle and due to which the accident took place. He had further alleged that the offending vehicle was insured for "unlimited liability" with the Oriental Insurance Company Ltd. It was further alleged that the liability, if any, was of the insurer.

4. Narain Singh, who was the driver of the offending vehicle, did not file any written statement.

5. The Oriental Insurance Company Ltd. had filed its written statement admitting the fact of accident. The Insurance Company had alleged that the offending vehicle was being driven against the terms and conditions of the insurance policy and the accident occurred due to overloading. The liability of the insurance company was limited to the extent of Rs. 15000/- for each passenger as provided under the Motor Vehicles Act, 1939.

6. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had come to the conclusion that the accident occurred due to rash and negligent driving of the driver of offending vehicle. It was further held that the offending vehicle was insured for "unlimited liability" with the Insurance Company. It was further held that the deceased was getting Rs. 2667.30 p.m. as salary and he used to spend Rs. 2000/- on his family. The deceased was not earning Rs. 2000/- p.m. from his private practice. The learned Tribunal had held that the deceased was aged about 43 years at the time of accident. It was further held that the claimant was depending upon the deceased-Ashok Akolkar. Thus, the dependency of the claimant was assessed Rs. 24000/- per annum. The age of superannuation was 58 years at that time and if the deceased would have been alive upto the age of 58 years, he would have earned Rs. 2000/- p.m. for fifteen years more. In this way, the Tribunal had assessed the compensation as Rs. 3 lakhs. The insurer was held liable to pay the compensation.

7. Feeling aggrieved by this, the Appellant-Insurance Company has preferred the present appeal.

8. Heard Sri Pankaj Purohit learned Counsel for Appellant, Sri R.S. Rawat learned Counsel for the Respondent No. 1 and Sri Sandeep Tandon learned Counsel for

the Respondent No. 2. None appeared for the Respondent No. 3. Perused the record.

9. Learned Counsel for the Appellant-Insurance Company contended that the offending taxi was insured for carrying 5 passengers and one driver only, but it was carrying 5 adults, two children and one driver (in all 8 passengers) which was contrary to the policy conditions and amounted to the breach of the terms of the insurance policy. Hence, the Insurance Company is not liable to pay compensation to the claimant. Learned Counsel for the Respondents refuted the contention and supported the judgment of the learned Tribunal. Perusal of the record reveals that the Respondent No. 2-Ajai Gupta, who was the owner of the offending vehicle, had categorically stated in his written statement that when the driver of the offending taxi reached at Dugbhyavi there was heavy rain and fog at the time of accident, due to which the offending vehicle skidded there and he could not negotiate the bend at the spot and the taxi fell into the gorge. Thus, it is not the case of the Respondents that the excess passengers were sitting on the front seat by which the driver of the offending taxi was not able to drive it properly and he could not negotiate the bend due to overloading on the front seat. As such, the accident did not occur due to the overloading. It is to be kept in mind that the minor breaches of conditions of the insurance policy and the breaches which are not found to have been the direct cause of the accident would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to the conditions of the insurance policy would not constitute sufficient grounds to deny the benefit of coverage of insurance to the claimant. Such a breach on the part of the insured must be established by the insurer to show that not only that the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage the victim suffered flowed from the breach. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Hon'ble Apex Court has held that the Tribunal in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act. It has further been held that the damage suffered by the victim must flow from the breach and it must be shown by the insurer. In the instant case, as we have already pointed out that the accident did not occur due to the breach of the conditions of the policy, as such we do not find any substance in the contentions raised by the learned Counsel for the Appellant.

10. Learned Counsel for the Appellant further contended that the liability can be fastened on the insurer u/s 95(2)(ii) of the Motor Vehicles Act, 1939 (old Act) as Rs. 15,000/- per passenger and the insurance company can be called upon to pay the compensation in terms of the policy. Learned Counsel for the Respondent refuted the contention and contented that the agreement in between the insurer and the insured was a contractual obligation and they have charged Rs. 250/- for five passengers as premium and it was for unlimited liability. The insurance company had filed the insurance policy before the Tribunal.

11. The insurance company has filed a photocopy of the insurance policy before the Tribunal and the same is quoted below:

Subject to Endt. I.M.T. Nos. 13,15,21,23,66,57

Attached hereto

OWN DAMAGE

NON OWN DAMAGE PHB.

GadhmirPur Saharanpur

1) Basic O/D Premium incl. % I.E.V. 1.15%

Rs. 275.00

1) Basic LPR Premium

Rs. 120.00

2) Add Overturning

Rs. 1035.00

2) Add for increase in limits of indemnity

Rs.....

3) Less Fire exclusion dis (-)

Rs.....

3) Incl. of LPR whilst used as tool of trade

Rs.

4) Less theft exclusion dis (-)

Rs.....

4) Accident of passengers-5

Rs. 250.00

(A) Rs.

5) Residual legal liability

Rs.....

5) Less % EDU disc

(A) Rs.

b) KA. to driver/cleaner etc.

Rs. 8.00

6) Add for Trailers Add For:

Rs.

7) Accident to soldier/sailor/Airmen (Endt. 19)

Rs.....

7)R/S

Rs.....

Rs.....

8) Liability for good carried

Rs.....

8)E/Q

Rs.....

9) Liability due to spark risk (Entd. 50)

Rs.....

9) Flood etc.

Rs.....

Gross Non O/D premium

Rs. 378.00

(B) Rs.

10) Less: EOD Disc % on

(B) Rs.

IMPORTANT NOTICE

The insured is not indemnified if the Vehicle is used or driven otherwise than in accordance with this Schedule. Any payment made by the Company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act, 1939 is recoverable from the insured. See the Clause headed "AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY. .

11) Add for: Motor Trade-Addl. Risk

Rs.....

12) Electronic Accessories

Total (C)

Rs. 1310.00 Rs.....

Less NCB 25% On (C)

Rs. 327.00

Gross O/D Premium

Rs. 982.50

Total Gross Premium Less special Discount

Rs. 1360.50 Rs. 160.05

10% spl. Dis.

Net Premium

Rs. 1224.00

Limits of Liability

Limit of the amount of the Company's liability u/s II-I(I) in respect of any one accident Such amount as is necessary to meet the requirements to the Motor Vehicle Act 1939. Limit of the amount of the Company's liability u/s II-I(ii) In respect of any one claim or series of a claims arising out of one event of Rs. 50,000.

Limitation as to Use

Use only under a Stage Carriage/ Contract Carriage permit within the meaning of the Motor Vehicles Act, 1939. The Policy does not Cover: 1) Use for organized racing pace making reliability trial or speed testing. 2) Use whilst drawing a trailer except the towing (other than for rewards) of any one disables mechanically propelled vehicle.

Driver: Any of the following

a) The insured b) Any other person Provided he is in the insured's employ and is driving on his order or with his permission. Provided that person driving holds a valid driving licence at the time of the accident or had hold a permanent driving licence (other than a loaner's) and is not disqualified from holding or obtaining such a licence.

Date of Signature of Proposal and Declaration.

Cover Note No. 305833. Collection No. 46392.

12. The insurance policy reveals that at serial No. 4 they have charged Rs. 250/- as premium for five passengers i.e. Rs. 50/- per passenger. To ascertain the extent of the said liability, the Indian Motor Tariffs (Rationalization and Revision) issued by the Tariff Advisory Committee were summoned from the Appellant. The Tariff Rules clearly provide that if the premium of Rs. 50/- per passenger (Rs. 250/- in case of taxi) has been taken, the liability would be unlimited. The Tariff Rule is reproduced below:

Legal Liability for Accidents to Passengers

i) Applicable to all Passenger Vehicles except (i) Motorised Rickshaws, (ii) Miscellaneous Vehicles

and (iii) Motor Trade (Road Risks)

Per Passenger on Total Licensed passenger carrying capacity

Limit of liability Limit of liability Limit of liability Continue

A) Any one Passenger 5000 5000 5000 10000 10000 10000 15000 15000 15000

B) Any one Accident 50000 75000 100000 50000 75000 100000 75000 100000 150000

Rs. 12/- Rs. 12/- Rs. 12/- Rs. 17/- Rs. 17/- Rs. 17/- Rs. 20/- Rs. 20/- Rs. 20/-

Per Passenger on Total Licensed passenger carrying capacity

Limit of liability Limit of liability Limit of liability

A) Any on Passenger 15000 15000 15000 20006 26660 26666 36006 36000 30060 Unlimited

B) Any one Accident 150000 225000 300000 160066 156600 200666 156600 225000 300600 Unlimited Rs. 50/-

Rs. 22/- Rs. 22/- Rs. 22/- Rs. 23/- Rs. 23/- Rs. 23/- Rs. 30/- Rs. 30/- Rs. 30/-

ii) Applicable to Motorised Rickshaws used for Hire or Reward:

Any one Passenger Rs. 10000/- Rs. 15000/- Rs. 20000/- Rs. 30000/- Unlimited

Any one Accident Rs. 50000/- Rs. 50000/- Rs. 50000/- Rs. 150000/- Unlimited

Rs. 30/- per Passenger Rs. 40/- per passenger Rs. 50/- per passenger Rs. 60/- per passenger Rs. 100/- per passenger

13. Perusal of the abovementioned Tariff Rules clearly reveal that if the premium of Rs. 50/- per passenger is taken the liability would be unlimited. In the case in hand, the Insurance Company had taken a premium of Rs. 50 per passenger (Rs. 250/- for 5 passengers) and as such it's liability was unlimited. Therefore, we do not find any substance in the contention raised by the learned Counsel for the Appellant.

14. Learned Counsel for the Appellant did not dispute the quantum of compensation awarded by the Tribunal. The Tribunal was justified in holding that the Insurance Company was liable to pay compensation as claimed by the claimant. The father of the claimant was aged about 43 years at the time of accident and he was working as Assistant Surgeon in the Health Department, Madhya Pradesh from where he was getting Rs. 2667.30 p.m. as salary and the salary certificate was also filed before the Tribunal to that effect. The deceased

used to spend Rs. 2000/- on his family. Thus, the dependency of the claimant was assessed Rs. 24000/- per annum. The age of superannuation was 58 years at the time of accident and if the deceased would have been alive upto the age of 58 years he would have earned Rs. 2000/- p.m. for fifteen years more. In this way, the Tribunal had assessed the compensation as Rs. 3 lakhs. Therefore. We do not find any infirmity in calculating the compensation.

15. In view of the foregoing discussion, the appeal lacks merit and liable to be dismissed.

16. The appeal is dismissed. No order as to costs.