

(2010) 01 AHC CK 0207

In the Allahabad High Court

Case No : First Appeal From Order No. 377 of 2006

Oriental Insurance Company Ltd.Thru R.M.

APPELLANT

Vs

Sarmila Devi & 4 Ors.

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0207

Hon'ble Judges : Devi Prasad Singh, J and Devendra Kumar Arora, J

Final Decision : Dismissed

Judgement

1. Heard Sri Pramod Kumar, learned counsel for the appellant Insurance Company, Sri Rajiv Kumar Dubey, learned counsel for the claimant respondents as well as perused the record.

2. Present appeal under Section 173 of Motor Vehicles Act, 1988, has been filed against the impugned award dated 6.3.2006, rendered by the Motor Accident Claims Tribunal/Additional District Judge Court No.7, District Sultanpur, in Claim Petition No.183/2003.

3. The brief facts giving rise to the present controversy are that the deceased Munshi Lal who was aged about 21 years, was a driver of vehicle No.D.I.U.P. 44 D4670. On 25.9.2003 at 6:30 a.m., in the morning, when the deceased was plying the vehicle near Lambhua, a truck bearing Truck No.U.P. 14B0762, coming from reverse direction rashly and negligently, hit the Jeep and in consequence thereof, the deceased succumbed to the injuries. The deceased was a driver and his monthly salary was about Rs.5000/ per month. An F.I.R. was lodged. The respondents claimants approached the Tribunal under Section 166 of the Motor Vehicles Act, 1988, claiming compensation to the tune of Rs.40,15,000.00.

4. The Tribunal framed six issues. The first issue relates to the factum of accident on 25.9.2003 at about 6:30 a.m., in the morning. The second issue relates to the validity of insurance policy. The third issue relates to the validity of driving license. The Tribunal while adjudicating issue No.1 with regard to accident in

question, recorded a finding that the deceased was plying Jeep keeping himself on the left side of the road. The truck which was coming from reverse direction, was being driven rashly and negligently by its driver. As a consequence thereof, the accident took place and deceased Munshi Lal succumbed to injuries.

5. The defence taken by the appellant Insurance Company is that the driver of the Jeep was having no valid license. The sketch of the place of occurrence prepared by the investigator, filed before the Tribunal, indicates that the Jeep was on its left side. It was because of the rash and negligent driving on the part of the truck driver the accident occurred and the deceased succumbed to injuries. The truck driver was coming from reverse direction keeping himself on the right side of the road. Accordingly, the Tribunal held that because of rashness and negligence on the part of the truck driver, the accident occurred. The finding has been recorded that the Jeep was duly insured by the Insurance Company. Further finding has been recorded while deciding the issue No.3, that the deceased Munshi Lal driver of the Jeep, was having valid license.

6. An objection was raised before the Tribunal by the appellant Insurance Company that the driver of the Jeep was having license to drive light vehicle but the Jeep was used as a taxi. It could not be held that the driver was plying the vehicle in terms of the license. Hence, appellant Insurance Company cannot be held responsible to pay compensation.

7. Undisputedly, the Surveyor was appointed by the appellant Insurance Company who submitted report. On behalf of the claimants respondents, three witnesses were produced i.e., PW1 Manni Lal, PW2 Sharmila and PW3 Santoshi but on behalf of appellant defendant, no witness was produced. An objection has been raised that since the Surveyor Report was prepared by an Officer of the Insurance Company itself, it suffers from bias and merely on the basis of the Surveyor Report, no finding can be recorded to the effect that the Jeep was used as taxi.

8. Since respondents claimants denied that the Jeep was used as taxi, the burden of proof was on the appellant to prove that the contents of Surveyor Report was correct and the Jeep was used as taxi. Under Section 103 of the Indian Evidence Act, the burden to prove a particular fact, lies on that person who wishes the court to believe its existence. The appellant Insurance Company has not discharged its obligation by adducing evidence to prove the contents of Surveyor Report.

9. Section 103 of the Indian Evidence Act further provides that signature contained on the document, must be proved to establish that the same has been written and signed by the person concerned.

10. However, during the course of argument when the record was perused by this Court as well as the learned counsel for the appellant Insurance Company, it appears that the Surveyor Report was neither filed nor proved in accordance with law. While moving an application, the Surveyor Report has been attached to the

affidavit. No application has been moved to adduce additional evidence in the present appeal. Accordingly, no notice may be taken with regard to Surveyor Report which has been filed along with the affidavit through an application.

11. The evidence on record as well as the finding recorded by the Tribunal, establishes that the Jeep driver was not at fault. It was the fault of the truck driver's rash and negligent driving of truck, as a consequence thereof, the accident in question occurred in which the deceased succumbed to injuries.

12. Learned counsel for the appellant Insurance Company relied upon the judgment reported on (2006) 4 SCC 250: National Insurance Co. Ltd. Vs. Kusum Rai and others, and submitted that since Jeep was used as taxi hence, on account of violation of terms and conditions of driving license as well as the registration of the Jeep, the Insurance Company is not liable to pay the compensation. The argument advanced by the learned counsel for the appellant, does not seem to make out a case to interfere in the present case. In the present case, no evidence has been led nor any material fact seems to be available on record to establish that the Jeep was used as taxi at the time of accident. In absence of any evidence led by the appellant, in view of the Indian Evidence Act, with regard to factum of use of Jeep as taxi, the submission of the learned counsel for the appellant Insurance Company, seems to be not sustainable. The attention of this Court has not been invited to any of the pleading on record which may establish that the driver of the Jeep was plying the vehicle as taxi at the time of accident. In absence of any pleading coupled with evidence on record, the submission of the learned counsel for the appellant Insurance Company, does not seem to be sustainable.

13. The Tribunal has awarded compensation holding the deceased's income at the rate of Rs.100/ per day i.e., Rs.3000/ per month.

14. In a recent judgment, reported in 2008(2) TAC 394 (S.C.) Laxmi Devi and others versus Mohammad Tabbar and another, Hon''ble Supreme Court has held that even notional income cannot be less than Rs.3000/ per month. Accordingly, compensation awarded by the Tribunal, does not seem to be excessive. Rather, it is just and proper.

15. Accordingly, the appeal is devoid of merit and is dismissed. The Award is confirmed. The amount deposited in this Court, shall be remitted to the Tribunal forthwith. The appellant Insurance Company shall deposit the entire amount in case already not deposited before the Tribunal, within two months from today. The Tribunal shall proceed in terms of the award expeditiously.