
(2006) 11 UK CK 0038

In the Uttarakhand High Court

Case No : Appeal from Order No"s. 197 and 199 of 2004 and 465 of 2006

Rewati Raman and Others

APPELLANT

Vs

U.P. Jal Nigam and Others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 2 UC 712

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

Bench : Division Bench

Advocate : Sudhir Singh, for U.P. Jal Nigam, for the Appellant; T.A. Khan, for Oriental Insurance Company and Lalit Sharma, for the Respondent

Judgement

J.C.S. Rawat, J.—Heard Sri Sudhir Singh learned Counsel for U.P. Jal Nigam, Sri T.A. Khan learned Counsel for the Oriental Insurance Company and Sri Lalit Sharma learned Counsel for the claimants. Perused the record carefully.

2. Since there is a common question of law and fact involved in all the appeals, therefore, all the aforesaid appeals have been heard together and are being disposed of by this common judgment.

3. Appeal from Order Nos. 199/2004 and 464/2006 u/s 173 of the Motor Vehicles Act have been filed against the award dated 18-03-2004 passed by the Motor Accident Claims Tribunal/District Judge, Nainital (hereinafter referred as Tribunal") in M.A.C.P. No. 42/1994 arising out of the accident dated 10-08-1993 between the Maruti Car No. UP 02-A-5680 and Truck No. UGQ-9312 at Goraparaw, Haldwani. In M.A.C.P. No. 42/1994 the learned Tribunal had awarded a sum of Rs. 50,000/- to the claimants against the U.P. Jal Nigam as "No Fault Liability" alongwith interest @ 9% per annum from the date of filing of the claim petition till the date of payment.

4. Appeal from Order Nos. 197/2004 and 465/2006 u/s 173 of the Motor Vehicles Act have been filed against the award dated 18-03-2004 passed by the Motor

Accidents Claims Tribunal/District Judge, Nainital (hereinafter referred as Tribunal") in M.A.C.R No. 41/1994 arising out of the aforesaid accident dated 10-08-1993. But, in this case i.e. in claim petition No. 41/1994 the learned Tribunal had awarded a sum of Rs. 2,49,000/- to the claimants as compensation. The liability to pay the compensation of amount was fastened upon the Oriental Insurance Company and U.P. Jal Nigam as 70% and 30% respectively. The claimants would get interest @ 9% per annum from the date of filing of the claim petition till the date of payment.

5. The Oriental Insurance Company has preferred two Cross Objections bearing No. 13836/2006 and 13367/2006 in A.O. Nos. 464/2006 and 465/2006 respectively challenging the finding with regard to the issue No. 2 "whether the accident took place due to the rash and negligent driving of the driver of Maruti Car or not".

6. The facts in nutshell are that two claim petitions bearing Nos. 41 and 42 of 1994 were filed by the claimants before the learned Tribunal alleging therein that on 10-08-1993 deceased Smt. Kiran Singhal was travelling from Haldwani to Rudrapur in the Maruti Car No. UP 02-A-5680, which was being driven on a normal speed by its driver-Arvind Kumar (deceased). When the Maruti Car reached near Goraparaw at about 12:30 p.m., all of a sudden the offending Truck No. UGQ-9312 came from the opposite direction rashly and negligently and hit the said car and due to which the driver of the car Arvind Kumar and Smt. Kiran Singhal had sustained the grievous injury on their persons and they succumbed to their injuries. It was further alleged that Smt. Kiran Singhal was aged about 21 years at the time of accident and she was having the qualification in the computer engineering. Hence, two claim petitions bearing Nos. 41 and 42 of 1994 had been preferred by the claimants.

7. The opposite parties filed their written statements and contested the case. The U.P. Jal Nigam had filed the written statement in claim petition No. 42/1994 that Arvind Kumar died in the alleged accident. It was further alleged that the U.P. Jal Nigam was the owner of the offending Truck which was involved in the said accident and the driver of the offending Truck was not responsible for the accident. It was further stated that the accident occurred due to the fault of the driver of Maruti car. The U.P. Jal Nigam had also filed the written statement in claim petition No. 41/1994 alleging therein that the deceased-Smt. Kiran Singhal died in the alleged accident. Smt. Manjula Goel, who was the owner of Maruti car, had also filed her written statement in both the claim petitions. She had alleged that the Maruti car was being driven by its driver at a normal speed and the accident occurred due to rash and negligent driving of the offending Truck's driver. She had further stated that the Maruti car was insured with the Oriental Insurance Company at the time of accident.

8. On the basis of the pleadings, the learned Tribunal framed necessary issues in both the claim petitions.

9. In claim petition Nos. 41/1994 (A.O. No. 197/2004 and 465/2006), the learned Tribunal had held that the evidence of the Truck's driver was completely cogent and credible and as such he was not rash and negligent at the time of accident. It was further held that the accident occurred due to rash and negligent driving of the driver of Maruti car. The learned Tribunal had further held at para 16 of the impugned award that the accident occurred due to the collision between the Truck and Maruti car. If the driver of the Truck would have taken care, the accident could have been avoided. The learned Tribunal had held that the liability of the truck cannot be discharged and the offending Truck was liable to pay the compensation upto the extent of 30% of the awarded compensation. Therefore, the findings recorded by the learned Tribunal in claim petition No. 41/1994 are self-contradictory. On the one hand, the Tribunal had held that the driver of the Truck was not rash and negligent at the time of accident. On the other hand, the Tribunal had held that the driver of the Truck was negligent upto the extent of 30%. Thus, the findings recorded by the Tribunal cannot be reconciled.

10. In claim petition No. 42/1994 (A.O. Nos. 199/2004 and 464/2006), the learned Tribunal had held that the driver of the Truck was not rash and negligent at the time of accident. It was further held that the accident occurred due to rash and negligent driving of the driver of the Maruti car and hence the liability cannot be fastened upon the owner of the Truck. The learned Tribunal had awarded a compensation of Rs. 50,000/- to the claimants under the "No Fault Liability". It is pertinent to mention here that both the claim petitions are arising out of the same accident in which the driver of the Maruti Car i.e. Arvind Kumar and one Smt. Kiran Singhal had succumbed to their injuries. In both claim petitions, the Tribunal had given contradictory findings with regard to the fastening the liability of compensation. Both impugned judgments were passed on 18-03-2004 in claim petition Nos. 41/1994 and 42/1994.

11. The learned Tribunal while appreciating the evidence had taken into consideration the newspaper cuttings, which was an inadmissible evidence. It is also pertinent to mention here that the newspaper cuttings are not admissible in evidence. The news items cannot be taken into account while appreciating the evidence of the parties, it is true that the U.P. Jal Nigam had adduced the evidence of the driver of the Truck who had supported the averments of the U.P. Jal Nigam. Thus, it cannot be said that entire findings recorded by the Tribunal had been given only on the basis of the newspaper cuttings.

12. Learned Tribunal had also held that since the claimants could not prove that the driver of the Maruti Car was having a valid driving licence at the time of accident, hence the driver of the Maruti Car was not having a valid driving licence. Learned Counsel for the claimants has submitted that the Oriental Insurance Company, who is the insurer of Maruti Car, had compensated to the owner of car to the tune of Rs. 85,000/- towards its damages. The Branch Manager, Rudrapur had also issued a certificate dated 25-06-2005 mentioning

that the Maruti Car was being driven by its driver Arvind Kumar, who was having a valid driving licence at the time of accident and the said driving licence was duly verified by the insurer. This document clearly reveals that the driver of Maruti Car was having a valid driving licence at the time of accident. But, without giving opportunity to both parties it cannot be held out rightly that the driver of Maruti Car was having a valid driving licence at the time of accident. So far as the authenticity of the said document is concerned, it requires the evidence of both parties.

13. In view of the foregoing discussion, we are of the view that the findings recorded by the Tribunal in both claim petitions are self-contradictory and inconsistent with each other and thus the findings cannot be reconciled. Apart this, the question of having a valid driving licence of the driver of Maruti Car is a question of fact and it can only be determined by the Tribunal after taking the evidence of the parties. It would be just and proper in the interest of the parties and in the interest of justice to set aside the impugned awards passed in both claim petitions and to direct the Tribunal to record the evidence of parties after consolidating the claim petitions so that no inconsistent finding would arrive. The matter is remanded to the Tribunal to decide them afresh in light of the observations made above after giving opportunity of adducing further evidence to the parties. It would be just and proper to direct the Tribunal to consolidate both the claim petitions and decide together.

14. In view of the above, the impugned awards dated 18-03-2004 passed by the Motor Accidents Claims Tribunal/District Judge, Nainital in M.A.C.P. Nos. 41 and 42/1994 are set aside. The matters are remanded back to the learned Tribunal with directions to dispose of both claim petitions in light of the observations made above. However, it is made clear that the amount already withdrawn by the claimants, if any, shall be adjusted by the Tribunal at time of final disposal of the claim petitions. The Tribunal is directed to dispose of the matter expeditiously, preferably within a period of four months from the date of the receipt of copy of this order.

15. All the appeals as well as the Cross Objections are disposed of accordingly. The parties shall bear their own costs.