

(2016) 07 UK CK 0012

In the Uttarakhand High Court

Case No : Appeal from Order No.258 of 2009.

Smt. Tarawati and Others - Appellants @HASH Hasanuddin and another

Date of Decision : 29-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2231

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Lalit Miglani, Advocate, for the Appellant; Mr. T.A. Khan, Senior Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J. - Both these appeals have arisen out of the common judgment rendered by the Tribunal on 25.04.2009, hence are being adjudicated together.

2. The accident occurred in the intervening night of 8-9.8.2008 at 2AM, when the truck no.UHQ-0747 being driven rashly and negligently within the premises of some factory situated in Roorkee dashed a watchman Mr. Janeshwar Prasad, who suffered serious injuries on account of such accident and later at some point of time, he succumbed to those injuries. So, his widow Smt. Tarawati Devi along with three other legal representatives came up before the Tribunal by way of filing claim petition 96 of 2008.

3. Learned Tribunal has awarded the compensation to the tune of rupees one lakh, as against the demand of rupees twelve lakh fifty thousand.

4. This award has been challenged by the claimants seeking enhancement of the same by way of filing AO No.258 of 2009, while insurance company has come up for complete setting aside of such award by filing AO No.338 of 2009.

5. Learned counsel for the insurance company has argued before this Court that the offending vehicle was driven by Mr. Hasanuddin, who was the owner of such vehicle as well. Although, his address has been shown to be the resident of

Roorkee town, but in the license which he produced before the Tribunal his permanent address has been shown to be of Allahabad and such driving license, having validity to drive heavy goods vehicle w.e.f. 12.12.2005 to 11.12.2008; therefore, the Tribunal relying on validity of such driving license has fastened the liability to pay the compensation on the insurance company.

6. It has further been argued that when the matter was investigated by the competent officer of the insurer, then the facts were revealed that Mr. Hasanuddin, a resident of Roorkee had got his license issued from Saharanpur and later on it was continued to be renewed from the office of licensing authority of Haridwar.

7. The information supplied by licensing authority with illegible signature reveals that such license of Mr. Hasanuddin S/o Idwa Hassan, R/o Roorkee, Haridwar was basically valid from 30.08.1986 to 31.10.1992 to drive heavy goods vehicle from Saharanpur and it was continuously renewed upto 03.02.2008 and lastly it was renewed w.e.f. 05.08.2008 to 04.08.2011, meaning thereby, the license could not be got renewed from 04.02.2008 to 04.08.2008 i.e. almost for six months and within this period the accident occurred on 09.06.2008. Thereby, it should be treated as that the driver Mr. Hasanuddin was not having any valid driving license and since he himself was the owner of the offending vehicle, therefore, liability should have been fastened upon the owner of the vehicle.

8. That apart learned Senior Counsel for the insurance company has also argued that as per the Section 6 of Motor Vehicles Act, Mr. Hasanuddin could not have two driving licenses at a time.

9. Having considered the contention of learned Senior Counsel, the Court would not like to set aside the award on either of these grounds for the reason that if Mr. Hasanuddin, the owner-cum-driver of the offending vehicle was having two driving licenses at a time, then, he was vulnerable for penal action at the end of transport authorities. But so far as the question of determination of fastening the liability is concerned, such issue cannot be taken into consideration.

10. As regards the failure of renewal of such driving license for the period of almost six months, as indicated above, is concerned, incidentally, the accident occurred in such period but even then also the insurance company cannot be exonerated from satisfying the award. In this regard, the position has been well explained by the constitutional bench of the Hon'ble Apex Court in the case of National Insurance Company Ltd. v. Swaran Singh and others, reported in (2004) 3 SCC 297, wherein, the Hon'ble Apex Court has summarised the law in the following words:-

"Under the Act holding of a valid driving license is one of the conditions of the contract of insurance. Driving of a vehicle without a valid license is an offence. Whereas in Section 3 the words used are "effective license", it has been differently worded in Section 149(2) i.e. "duly licensed". If a person does not hold an effective license 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 license" 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."

Therefore, in view of what has been set forth above, the appeal filed by the insurance company fails and it is accordingly dismissed.

11. As regards AO No. 258 of 2009, which has been moved for the enhancement of the compensation, I find that the deceased, a pensioner from the military engineering service, was getting Rs. 3,200/-, as salary from his employer at the time of accident and Rs. 3,601/- as pension from the Government.

12. Since, he was re-employed, hence it would not be appropriate for the Court to take the amount of pension into consideration for the simple reason that even after his death in the accident as such, his wife and dependants certainly would have been getting the part of such pension and what has been lost by them from the pension at a time can be equated also by mitigating their expenses on account of the absence of the deceased in the family. However, the Court would consider his additional income which he was getting from his new employer at the relevant time.

13. The Court has taken the notional income viz. rupees three thousand per month for evaluating the compensation, which this Court would not like to disturb but at the same time I find that as per the Sarla Verma case, the multiplier between the age group of 61 to 65 years persons would have been "7" rather than "4".

14. This way deducting one-third towards his personal expenses of the deceased, the multiplier should have been applied on the amount of Rs. 24,000/-. Thus, it comes to Rs. 1,68,000/-.

15. The award as granted by learned Tribunal is hereby enhanced and modified as above.

16. The appeal AO No.258 of 2009 stands allowed accordingly in the above terms.

17. Let a copy of this judgment also with LCR be sent back.