
(2006) 05 UK CK 0038
In the Uttarakhand High Court

Sulochana Negi and Others

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 4 ACC 604

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—The abovementioned three appeals arise out of the same motor accident, parties to the proceedings are same and similar questions are involved for determination in these appeals, therefore, these appeals are being decided by this common judgment for convenience. It may be mentioned that in these cases the injured and the deceased persons belonged to one and same family i.e. Smt. Sulochana Negi is the injured, while deceased Yadubeer Singh was her husband and deceased Km. Deepa was her daughter. All these persons were travelling by the same bus on the fateful day, which resulted in the death of two persons and injuries to Smt. Sulochana Negi along with other persons.

2. These appeals have been preferred u/s 173 of the Motor Vehicles Act, 1988, (in short the Act) against the judgment and Award dated 11th March, 1991 passed in M.A.C. Petition No. 17 of 1989, M.A.C. Petition No. 15 of 1989 and M.A.C. No. 16 of 1988 by Motor Accident Claims Tribunal/District Judge, Chamoli (in short the Tribunal). In Claim Petition No. 17 of 1989, the learned Tribunal has awarded compensation of Rs. 60,000 in favour of the injured claimant Smt. Sulochana Negi, while in Claim Petition No. 15 of 1989, the claimants were awarded compensation of Rs. 1,44,000 for the death of deceased Yadubeer Singh and in Claim Petition No. 16 of 1989, compensation worth Rs. 25,000 was awarded to the claimants for the death of Km. Deepa. In addition, interest @ 12% per annum was also awarded from the date of order till payment. Aggrieved the Insurance Company-appellant has come up in appeal.

3. Brief facts of the case are that injured-claimant Sulochana Negi, her husband Yadubeer Singh and daughter Km. Deepa, besides several persons, sustained grievous injuries and consequently few died, but the claimant Sulochana survived in a motor accident, which occurred due to rash and negligent driving by the driver of bus No. USY-3637 owned by Budhi Ballabh and driven by Rajpal Singh on 29th May, 1989 in between Rudraprayag and Kartik Swami motor road near place Barsil. Hence the aforesaid claim petitions were filed by the injured claimant Smt. Sulochana Negi and her minor sons represented by her. It was alleged that injured Smt. Sulochana, aged about 40 years and earning Rs. 1,960 from teaching was travelling along with her husband Yadubeer Singh and daughter Km. Deepa Negi on the fateful day by the ill-fated bus, which met with an accident. Yadubeer Singh was aged 46 years and earning Rs. 2,218.45 as his salary, while Km. Deepa was a minor girl aged about 9VS years of age. The bus was duly insured with the Insurance Company-appellant. Compensation worth Rs. 2,00,000, Rs. 3,00,000 and Rs. 50,000 was claimed for the injuries sustained by the injured Sulochana Negi, deaths of her husband and daughter respectively.

4. The opposite parties contested the claim petition by filing their written statement and denied the allegations made in the claim petition for want of knowledge. The owner of the vehicle Budhi Ballabh Joshi in his written statement asserted that the accident occurred due to mechanical failure of the vehicle and there was no negligence on the part of the driver or owner. The driver of the ill-fated bus had taken the same stand as that of the owner.

5. The Insurance Company-appellant also denied the allegations made in claim petition, but admitted the ownership and insurance of the bus in question. It was specifically pleaded that the insurer was liable to pay compensation of Rs. 15,000 per passenger.

6. On the pleadings of the parties, the learned Tribunal framed as many as seven issues in the case. After recording the evidence of the parties and perusing the same, it was held that the injuries to-Smt. Sulochana Negi and death of her husband and daughter was the result of injuries sustained by them in the motor vehicle accident due to rash and negligent driving by the driver of bus No. USY-3637. On the point of liability of the Insurance Company toward third party risk, the learned Tribunal has observed that the bus in question was insured to the extent of Rs. 2,55,000 and the maximum limit of compensation payable by the Insurance Company was Rs. 4,50,000 in all and @ Rs. 15,000 per passenger. The learned Tribunal has made a reference to the copy of insurance policy on record (Ext. A-I) Ultimately, the compensation in all the three claim petitions has been awarded against the Insurance Company fastening the liability to pay the entire amount of compensation along with interest.

7. The only question, which has been pressed before me in these appeals on behalf of the appellant, is that the finding of the learned Tribunal directing the Insurance Company to pay the entire amount of compensation is against the terms and conditions of the insurance policy. It has been submitted that when it

was observed by the learned Tribunal that under the policy, the liability of the Insurance Company was limited to the extent of Rs. 15,000, there was no justification to fasten the entire liability on the appellant. It was vehemently submitted that no higher premium was taken by the Insurance Company for payment of compensation exceeding the statutory liability of Rs. 15,000 per passenger.

8. I have heard the submissions of the learned Counsel for the rival parties and have gone through the material on record including the insurance policy Ext. A-1.

9. Ext. A-1 (paper No. 17-C on the file of Claim Petition No. 15 of 1989) is the copy of the Insurance Policy. From a bare perusal of the policy it is evident that the owner of the bus had taken a comprehensive insurance policy on the estimated value of the bus at Rs. 2,55,000. In the schedule of premium an additional payment of Rs. 360 @ 12 each in respect of 30 passengers was shown. The sitting capacity of the bus has been mentioned in all, meaning thereby that besides 30 passengers, one driver and one conductor were including in the sitting capacity. The maximum limit in respect of 30 passengers was mentioned as Rs. 4,50,000. The contention of the Insurance Company is that this additional payment @ 12 per passenger was to cover its limited liability of 30 passengers u/s 95 of the old Act of 1939. The Insurance Company has taken no additional payment of premium towards increased Third Party Limits. Admittedly, this accident had occurred on 29th May, 1989, when the provisions of Section 95 of Motor Vehicles Act, 1939 were applicable.

10. Having gone through the insurance policy (Ext. A-I), I am of the view that the law laid down by the Apex Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , is fully applicable to the present case at hand. In the case before the Apex Court, the observations made in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , were reproduced in paragraph No. 5 in respect of comprehensive insurance policy, wherein the Apex Court observed as under:

Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of the liability with regard to third-party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this behalf.

11. In paragraph No. 13 the Apex Court in the case of New India Assurance Co. Ltd. v. C.M. Jaya (supra), has observed that "In a recent judgment in National Insurance Co. Ltd. Vs. Nathilal and Others, , this Court following the case of Jugal Kishore aforementioned, held that in view of the fact that no extra premium was paid towards unlimited liability as could be seen from the policy produced, the liability of the Insurance Company was limited to Rs. 15,000".

12. Following the ratio of the Apex Court Judgment in the Paul George Vs. State, ; C.M Jaya's case (supra), in the light of the insurance policy produced in the present case as Ext. A-1, I am of the considered view that the liability of the appellant-Insurance Company limited to the extent of Rs. 15,000 in each case u/s 95(2) of the old Act of 1939 and it is not liable to pay the entire amount of compensation. Accordingly the appeals preferred by the Insurance Company are liable to be allowed and the impugned order under appeal is liable to be modified.

13. It has been urged by the learned Counsel on behalf of the owner of the bus as well as on behalf of the appellant that the rate of interest @ 12% awarded by the learned Tribunal is excessive and on higher side. It has been submitted that considering the present bank rates of interest and the declining trend, the interest rate is liable to be reduced. I have considered the submission and I find force in this submission.

14. In a recent judgment of the Apex Court in the case of The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , it was observed that while awarding interest note of prevailing rate of interest on bank deposits shall be taken. Taking into consideration the facts and circumstances of the case and keeping in view the declining trend in the bank rate of interest I am of the view that to meet the ends of justice, the interest @ 6% per annum on the compensation amount instead of 12% per annum is awarded shall be made payable by the Insurance Company and the owner of the bus both.

15. It is made clear that the appellant-Insurance Company shall make payment of Rs. 15,000 along with interest @ 6% per annum in each case, as awarded by the Tribunal and the rest of the compensation amount along with interest @ 6% p.a. shall be payable by the owner of the bus, Sri Budhi Ballabh Joshi in each case. The claimants shall be at liberty to execute the award against the owner-respondent Sri Budhi Ballabh Joshi accordingly and in case payment by the appellant-Insurance Company in excess of its liability including the interest thereon has already been made to the claimant, the insurer may recover the excess amount from the owner.

In the result, all the three appeals are allowed. The impugned judgment and award passed by the learned Tribunal in M.A.C. Claim Petition No. 17 of 1989, M.A.C. Petition No. 15 of 1989 and M.A.C. Petition No. 16 of 1989 stands modified to the extent that the Insurance Company-appellant in each of the cases shall pay compensation of Rs. 15,000 along with interest @ 6% per annum as directed by the Tribunal instead of entire amount The rest of the compensation along with the interest @ 6% per annum as directed by the Tribunal in these claim petitions shall be payable by the owner of the bus No. US Y-3 737, Sri Budhi Ballabh Joshi. In the circumstances of the case, there is no order as to costs.