
(2009) 01 UK CK 0004

In the Uttarakhand High Court

Case No : Appeal Against Order No. 261 of 2006

Tejpal Singh

APPELLANT

Vs

Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 01 UK CK 0004

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : P.C. Bisht and Dinesh Gahatori, for the Appellant; I.P. Kohli and Ramji Srivastava, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of Motor Vehicles Act, 1988, has been preferred by the Appellant i.e. owner of offending Vikram involved in the accident, against the judgment and order dated 28.1.2006 passed by Motor Accident Claims Tribunal/Additional District Judge Haridwar/III F.T.C. District Haridwar in M.A.C.P. No. 90/2004, Rakesh and Ors. v. Pramod Kumar and Ors.

2. The claimants-Rakesh and others filed a claim petition before the Tribunal for grant of compensation on account of death of deceased-Smt. Kusum in a motor accident alleging therein that on 19.7.2004 Smt. Kusum along with family members was going to Haridwar from Rishikesh in vehicle Vikram No. U.A.07C/9139. When the said vehicle reached in front of Midway Hotel at Rishikesh-Dehradun bend, Bus bearing Registration No. U.P.14M/9408 being driven by its driver Pramod Kumar rashly and negligently came there and hit the said Vikram at 7.00 a.m., as a result of which Smt. Kusum sustained injuries on her person and died at the spot itself and other passengers sitting in the Vikram also sustained serious injuries in the accident. Therefore, the claimants claimed a sum of Rs. 10,95,000/- as compensation against the opposite parties.

3. Opposite parties filed their separate written statements denying the contents of the claim petition filed by the claimants.

4. The learned Tribunal on the basis of pleadings adduced by the parties framed necessary issues. Parties led oral as well as documentary evidence in support of their case.

5. The learned Tribunal after having considered the entire evidence available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 1,14,000/- along with interest at the rate of 8% per annum from the date of filing the petition till the date of actual payment, vide judgment and award dated 28.1.2006. The Tribunal at the same time directed that although 50% amount of compensation shall be paid by the insurer of Vikram in question i.e. Oriental Insurance Company Ltd., but the insurer shall have the right to recover that amount from the owner of vehicle i.e. Vikram in question.

6. Feeling aggrieved by the aforesaid direction issued by the Tribunal, the owner of Vikram in question has preferred the present appeal before this Court.

7. Heard Sri P.C. Bisht, learned Counsel for Appellant, Sri V.K. Kohli, senior Advocate assisted by IP. Kohli, learned Counsel for Respondent No. 1, Sri Sanjeev Singh, learned Counsel for claimants-Respondents No. 2 to 7, Sri Ramji Srivastava, learned Counsel for Respondent No. 9 and perused the record.

8. As far as factum of accident is concerned, the learned Tribunal after having considered the entire evidence adduced before it came to the conclusion that on 19.7.2004 at 7.00 a.m. in front of Midway Hotel, the accident has occurred on account of contributory negligence of both the vehicles involved in the accident i.e. Bus No. U.P.M/9408 and Vikram No. U.A.07C/9139, in which Smt. Kusum sustained injuries and consequently succumbed to injuries. I do not find any illegality in the said finding recorded by the Tribunal and same deserves to be confirmed.

9. The Tribunal further held that at the time of accident driver of Vikram in question was having valid and effective driving licence. I also do not find any illegality in the said finding and same also deserves to be confirmed.

10. As far as direction issued by the Tribunal with regard to this aspect that 50% amount out of total awarded amount of compensation shall be paid by the insurer of Vikram in question and insurer shall have the right to recover that amount from the insured i.e. owner of Vikram in question, is concerned, the same appears to be improper and unjustified in view of the fact that neither driver who was driving the offending Vikram in question at the time of accident was having any invalid driving licence nor any document pertaining to offending Vikram in question was found to be invalid. The Tribunal has recorded the finding that it is a case of contributory negligence and both the vehicles have contributed the negligence in causing the accident in equal proportion. Merely by contributing the negligence in an accident does not authorize the insurer to recover the awarded amount of compensation from the insured. The liability to pay the amount of compensation rests on the insurer of Vikram in question. Incase, if all the documents pertaining to the vehicle as well as driving licence of driver of

offending vehicle were found to be valid at the time of accident, then the insurer of vehicle has to pay the amount of compensation and its liability cannot be indemnify in any manner. I am of the view that direction issued by the Tribunal in this regard is not tenable in the eye of law.

11. I, accordingly, set aside that direction and direct that out of total awarded amount of compensation, 50% shall be paid by the insurer of Vikram in question i.e. Oriental Insurance Company Ltd. and not by the insured i.e. owner of offending Vikram in question.

12. As far as amount of compensation to be awarded in favour of claimants is concerned, A.O. No. 260 of 2006 filed by claimants for enhancement of amount of compensation has been partly allowed by me and amount of compensation has been enhanced from Rs. 1,14,000/- to Rs. 1,95,000/- and rate of interest has been reduced to 6% per annum from 8% per annum.

13. Accordingly, appeal is partly allowed. The impugned judgment and award is modified to the above extent.