
(2008) 07 UK CK 0023
In the Uttarakhand High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Santosh Kumari and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2008) 07 UK CK 0023

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

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of Motor Vehicles Act, 1988, has been preferred by the appellant-insurance company, who is insurer of Maruti Van No. U.P. 02C/7948, against the judgment and award dated 04.03.2006 passed by M.A.C.T./1st Fast Track Court, Nainital, in M.A.C.P. No. 168 of 2004, *Km. Santosh Kumari and Anr. v. Harish Chandra Gururani Anr.*

2. Brief facts of the case as narrated in claim petition are that on 6.7.1991 Joginder Singh (deceased) was driving Maruti Van No. U.P.02C-7948 and was going from Haldwani to Bareilly. When the said vehicle reached near Halduchaur, a Truck No. U.S.T.3931 which was coming from the opposite direction and was being driven by its driver in a rash and negligent manner, dashed against the Maruti Van. In the accident, the owner of Maruti Van and driver Joginder Singh died at the spot. The deceased-Joginder Singh was employed as driver over Maruti Van No. U.P.02 C-7948 by its owner 2 and had been getting a sum of Rs.2500/- per month as salary and Rs.40/- per day for diet. The claimants thus claimed a sum of Rs.3,76,000/- as compensation against the opposite parties.

3. Opposite party No. 1 contested the case by filing written statement and pleaded that at the time of accident deceased-Joginder Singh was driving Maruti Van No. U.P.02-7948. He also pleaded that on the date of accident he was not the sole owner of Maruti Van in question rather Ramesh Chandra Gururani was

also owner of Maruti van in question. He further pleaded that on the date of accident he was unmarried and his parents was alive. He also pleaded that Maruti Van was got released by him from the court and on the date of accident Maruti Van was insured with New India Assurance Co. Ltd.

4. Opposite party No. 2-The New India Assurance Co. Ltd. filed written statement and pleaded that since it was not given any information with regard to accident, therefore, the insurance company is not liable to pay any compensation. It has also pleaded that owner and insurer of Truck No. UST-3931 have not been made party and therefore the claim petition is liable to be dismissed.

5. The Tribunal on the basis of pleadings adduced by the parties framed following issues:

(i) Whether alleged accident occurred in the same manner as stated by claimants?

(ii) Whether claim petition is bad for non-joinder of owner and insurer of Truck No. U.S.T.-3931 as party?

(iii) Whether claim petition is time-barred?

(iv) To which compensation claimants are entitled to get and from whom?

6. Parties led their oral as well as documentary evidence in support of their cases and the Tribunal after having assessed the entire evidence available on record and hearing learned Counsel for the parties, decreed the claim petition for a sum of Rs.3,04,000/- along with an interest @ 6% per annum from the date of filing the petition till the date of actual payment. The Tribunal also directed The New India Assurance Co. Ltd., who is insurer of Maruti Van No. U.P. 02-7948, to pay the amount of compensation to the claimants.

7. Feeling aggrieved by the aforesaid impugned judgment and award dated 04.03.2006, the insurance company, who is insurer of Maruti Van No. U.P. 02-7948, has preferred the appeal u/s 173 of Motor Vehicles Act, 1988, before this Court.

8. Heard Sri M.K. Goyal, learned Counsel for the appellant, Sri Z.U. Siddiqui, learned Counsel for respondents No. 1 & 2, Sri Lalit Belwal, learned Counsel for respondent No. 3 and perused the record.

9. As far as factum of accident is concerned, it is the case of the claimants that Maruti Van No. U.P.02-7948, which was being driven by deceased-4 Joginder Singh, dashed with Truck No. UST-3931. The Tribunal after the detailed assessment of the evidence has reached to the conclusion that the accident is a result of rash and negligence of drivers of both the vehicles involved in the accident. I do not find any infirmity in the conclusion drawn by the Tribunal with regard to this aspect that accident took place on account of contributory negligence of deceased-driver of Maruti Van and the driver of Truck involved in the accident.

10. The sole question which is to be determined is as to whether the claimants, who are legal representatives of deceased-Joginder Singh, are entitled to get the amount of compensation awarded by the Tribunal or not. The record reveals that owner, driver and insurer of Truck No. U.S.T.-3931 which is involved in the accident, have not been arrayed as party in the claim petition. The argument of learned Counsel for claimants/respondents No. 1 and 2 is that although the First Information Report was lodged against the Truck involved in the accident but the police during investigation of the criminal case could not trace out that Truck and only for this reason the owner, driver and insurer of Truck in question could not be arrayed as party before the Tribunal. It has further been submitted by learned Counsel for claimants/respondents No. 1 and 2 that in case, if the claimants have not arrayed owner, driver and insurer of Truck involved in the accident as party in the claim petition, even then the claimants can claim the amount of compensation from either the owner and insurer of Maruti Van or the owner and insurer of offending Truck in question. 5 Keeping in view the evidence available on record, I am of the opinion that once the Tribunal came to the conclusion that it is a case of contributory negligence, then the amount of compensation should have been divided in the same portion in which the responsibility of negligence was on the part of respective drivers of the vehicle. The Tribunal has fell in error in fixing the liability for payment of total amount of compensation against the insurer of Maruti Van which was being driven by deceased-Joginder Singh. As I have already observed that owner, driver and insurer of offending Truck have not been made party and whereabouts of the Truck involved in the accident could not be known, then the claimants could not get the amount of compensation which fell on the part of the Truck on account of rash and negligence of its driver. The language adopted by the Tribunal in the impugned judgment shows that drivers of both the vehicles were equally responsible for contributory negligence, therefore, under these circumstances the claimants are not at all entitled for half of the amount out of the total amount of award granted by the Tribunal.

11. As far as remaining amount of compensation is concerned, it is true that driver-Joginder Singh (deceased) was driving Maruti Van at the time of accident. The claimants are the legal heirs of driver-Joginder Singh, who died in the accident. The record further reveals that the claimants filed the claim petition under the provisions of Workmen's Compensation Act, but on account of legal technicalities the petition was withdrawn and thereafter the claim petition has been filed under 6 the provisions of Motor Vehicles Act before this Court. The Tribunal has completely overlooked that the deceased was driving Maruti Van and was found equally negligent for causing the accident. In view of the finding of contributory negligence on the part of the driver of Maruti Van, the insurer and owner of Maruti Van cannot be held vicarious liable for the negligence of driver of Maruti Van, who himself was driving the vehicle with rash and negligence at the time of accident. As I have already observed that the claimants did not make owner, driver and insurer of Truck in question as party to the claim petition obviously because the claimants exercised option of approaching the Claims

Tribunal under the Motor Vehicles Act against the owner and insurer of Maruti Van. It is also worthy to mention here that the claim petition filed by the claimants under the Workmen's Compensation Act against the employer was withdrawn keeping in view the legal technicalities coming in the way. Since the accident was caused because of contributory negligence of drivers of both the vehicles, the insurer of Maruti Van could not held liable under the provisions of Motor Vehicles Act.

12. Learned Counsel for claimants/respondents No. 1 and 2 has argued before me that the Tribunal was justified in awarding the compensation in the present case under the provisions of Section 163A of Motor Vehicles Act. He has cited before me a decision of Division Bench of this Court, reported in 2007 (4) T.A.C. 855 (Utt.) Smt. Sunita Devi and Ors. v. United India Insurance Co. Ltd. and Anr. in support of his contention.

13. I have gone through the decision cited by learned Counsel for claimants/respondents No. 1 & 2 and I am of the view that the facts and circumstances of the present case are absolutely different and the claimants does not get any help of the aforesaid cited case.

14. Learned Counsel for claimants/respondents No. 1 and 2 has further cited a decision of the Hon'ble Apex Court rendered in the case Deepal Girish Bhai Soni and Ors. v. United India Insurance Co. Ltd., Baroda reported in 2004 (2) T.A.C. 289 (Kant.) and has submitted that in view of Section 163A a new pre-determined structured formula for payment of compensation to road accident victims came into existence and thus the compensation could be awarded to the claimants even if the exclusive fault/negligence of the driver was there.

15. I have also gone through the above cited ruling cited by learned Counsel for claimants/respondents No. 1 & 2 and I am of the view that this ruling also does not apply to the facts and circumstances of the present case.

16. It is made clear that Section 163A of Motor Vehicles Act came into existence on 14th November, 1994, while in this case the accident took place on 6.7.1991 which is much earlier than the provisions of Section 163A of Motor Vehicles act came into existence. Further, it is made clear that it is not a case based on "no fault liability" as the claim petition was filed by the claimants against the owner and insurer of Maruti Van. It is an admitted fact that the 8 driver-Joginder Singh was himself driving the vehicle with rash and negligence at the time of accident, therefore, the claimants cannot be said to be entitled to get the amount of compensation on account of own negligence of deceased-driver. Thus, the claimants are also not entitled to get any amount of compensation from insurance company on account of death of Joginder Singh, who himself was driving Maruti Van at the time of accident. However, keeping in view the special circumstances of this case, the insurance company of Maruti Van would pay a sum of Rs.50,000/- as "no fault liability" to the claimants.

17. For the reasons stated above, I am of the view that appeal filed by the

insurer of Maruti Van No. U.P. 02C-7948, deserves to be allowed.

18. Accordingly, appeal is allowed. The impugned judgment and award dated 4.3.2006 passed by Tribunal is modified upto an extent that the claimants are entitled for a sum of Rs.50,000/- (Rupees fifty thousand only) on account of "no fault liability" as compensation. The amount so awarded shall be payable to the claimants by the insurer of Maruti Van No. U.P.02C-7948, along with interest @ 7.5% per annum from the date of filing the petition till the date of actual payment.

19. The statutory amount deposited by the appellant with this Court be remitted to the Tribunal concerned. Further the excess amount, if any, has been deposited by the appellant with the Tribunal concerned, the same be refunded to it.