

(2017) 06 UK CK 0038
In the Uttarakhand High Court
Case No : 254 of 2010

The New India Assurance Company Limited

APPELLANT

Vs

Govind Singh @ Gopal & Another

RESPONDENT

Date of Decision : 21-06-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 167](#),
[Section 167](#) - Option regarding claims for compensation in
certain cases

Citation : (2017) 06 UK CK 0038

Hon'ble Judges : Servesh Kumar Gupta

Bench : Single Bench

Advocate : T.A. Khan, ?Ganesh Kandpal

Judgement

1. As both these appeals have arisen out of the same judgment and order dated 9.12.2009, hence are being taken up together for adjudication.

2. The accident occurred on 16.11.2003 at 8.30 PM when a Tata truck no. UA01/2582 being plied in the serpentine hilly roads of District Almora skidded off from the road and fell in the deep ditch of 500 metres below from the main road. As a consequence, truck owner Mahesh Chandra Bhatt, driver Prakash Chandra and a passenger Devendra Singh and one more person lost their lives at the spot. The claim petition no. 20/2008 was presented by father of Devendra Singh claiming the compensation to the tune of Rs. 5,00,000/-, whereagainst Tribunal has awarded

Rs. 1,30,000/- along with 6 per cent annual interest from the date of institution of the petition till the date of actual payment. This award has been challenged by the insurance company by way of filing the AO No. 254/2010, while the claimant Govind Singh @ Gopal has come up for enhancement of such award by filing the AO No. 241/2010.

3. The accident and the losing of life, as indicated above, have not been

disputed. At the same time, it is also relevant to note that the vehicle concerned was covered under the package policy issued by the New India Assurance Company Ltd.

4. Learned Senior Counsel for the insurance company has contended that prior to the presentation of the claim petition no. 20/2008, the claimant Govind Singh had instituted a workmen compensation petition no. 61/2003 before the competent Court, wherein the statement of Smt. Uma Bhatt, wife of owner late Mahesh Chandra, was recorded. In her deposition, Smt. Uma Bhatt disclosed that deceased Devendra Singh was not in the employment on the truck in any manner. Therefore, the competent authority dismissed the said WCA Petition No. 61/2003 on the ground that the deceased Devendra Singh was not employed on the truck at the relevant date and time. After losing such petition, Govind Singh instituted the claim petition no. 20/2008 before the MACT Tribunal.

5. Learned Senior Counsel for the insurance company has placed reliance on the provisions of Section 167 of the Motor Vehicles Act, 1988, which contemplates as under:

"167. Option regarding claims for compensation in certain cases.-- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to,

any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Act but not under both."

6. So, it is amply clear that the claimant cannot exercise the option of claiming the compensation under both these Acts. Once he exercised the option claiming compensation under the Workmen's Compensation Act, 1923, then he cannot open the chapter again under the Motor Vehicles Act . So, I do agree with the contention of learned Senior Counsel and find that the claim petition no. 20/2008 was liable to be dismissed on this ground alone.

7. That apart, it has been argued by the learned Senior Counsel that since Mr. Devendra Singh was purely a gratuitous passenger, as has been held by the Tribunal and such fact has not been refuted by the claimant in any manner, therefore, such gratuitous passenger was not covered even under the package policy of the truck because the vehicle which met with the accident was a goods vehicle.

8. In the case of National Insurance Co. Ltd. v. Prema Devi & Others, reported in 2008 (2) T.A.C. 1 (S.C.), the Hon'ble Supreme Court has held that the High Court was not justified in holding that insurer had liability to satisfy the award if any gratuitous passenger was travelling. It was further held that carrying of passengers in a goods carriage is not contemplated in the Act and the provisions do not enjoin any statutory liability on owner of vehicle to get his vehicle insured

for any passenger travelling in a goods carriage and insurer would have no liability.

9. So on the above count as well, the claim petition instituted by Govind Singh was liable to be dismissed.

10. For the reasons set forth above, AO No. 254/2010 preferred by the insurance company is hereby allowed. Impugned judgment and order dated 9.12.2009 is set aside. All the amount which has been released in favour of the claimant shall be recoverable from him along with 6 per cent simple annual interest w.e.f. the date of release of such amount till the date of actual recovery at the instance of the appellant insurance company. Remaining amount lying deposited with the Tribunal and the interest accrued thereon shall be returned to the insurance company.

11. In view of the foregoing discussions, AO No. 241/2010 preferred by the claimant is dismissed on merits as well as on the ground of delay. Delay condonation application (CLMA 5786/2010) stands rejected.

12. Let the LCR be sent back.