

(2007) 12 UK CK 0023
In the Uttarakhand High Court
Case No : A.O. No. 94 of 2006

The New India Assurance Company Ltd.	APPELLANT
Vs	
Manoj Krishnani and Another	RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), 173

Citation : (2008) 1 UC 601

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri P.C. Maulekhi, for the Appellant; Sri P.C. Bisht for Resondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Rajesh Tandon, J.—Heard Shri P.C. Maulekhi, counsel for the Appellant and Shri R.S. Bisht, counsel for the Respondent No. 1.

2. This is insurer's appeal.

3. By the present appeal, filed u/s 173 of the Motor Vehicles Act, 1988 the Appellant has prayed for setting aside the judgment and award dated 20-12-2005 passed by the Motor Accident Claims Tribunal, Nainital in M.A.C.P. No. 198 of 2003.

4. Briefly stated, a motor accident claim petition No. 198 of 2003 was made for compensation of Rs. 5,00,000/- on account of injuries sustained by the claimant Manoj Krishnani. According to the claim petition, on 25-8-2003 the claimant was going to Nainital from Almora by Motor Cycle No. UA 04-4668. As soon as he reached near Pines at Bhawali-Nainital Marg, Fiat Uno No. 4 C-4242 which was being driven rashly and negligently dashed the motorcycle. As a result of the said accident, the claimant sustained grievous injuries. The claimant was referred to B.D. Pande Hospital, Nainital and thereafter he was referred to Krishna Nursing Home, Haldwani for better treatment. The bones of his right leg got broken. His

right leg was operated and nails were fitted in his leg. The leg of the claimant was also plastered for 45 days. The claimant has become unable to walk. His business has suffered and he has suffered heavy monetary loss. The claimant has suffered from physical and mental agony. The claimant has spent a sum of Rs. 90,000/- towards medical expenses. He has been advised by the doctor for the future operation. The accident was reported in Tallital Police Station. It has been stated that the claimant has become partly disabled. The claimant was earning a sum of Rs. 7,000/- per month. A sum of Rs. 5,00,000/- has been claimed towards compensation.

5. A written statement has been filed by the owner of Fiat Uno admitting the date and time of accident. It has been submitted that the accident had taken place due to rash and negligent driving of the Motorcycle by the Motorcyclist. The Fiat Uno was being driven by its driver cautiously and the driver was holding a valid driving licence. The claimant is not entitled for any compensation.

6. The New India Assurance Company has filed a written statement stating therein that the insurance company has not been informed about the accident u/s 158(6) of Motor Vehicles Act. The claim petition of the claimant is not maintainable. The drivers of the vehicles in question were not having valid driving license. The compensation has been claimed in exaggeration. The claimant has sustained simple injuries and the same cannot be said to be permanently disabled. The claim petition is liable to be dismissed.

7. On the basis of the pleadings, the following issues have been framed:

8. The claimant has examined himself as P.W. 1. The Defendant has examined Pankaj Bhalla as D.W.1.

9. While deciding as to whether on 25-8-2003 at about 1.30 p.m. Fiat Uno No. U.P. 4 C dashed the motor cycle of the claimant by driving the same rashly and negligently as a result of which the claimant sustained injuries, as to whether the accident had taken place due to rash and negligent driving of the motorcycle and further as to whether the accident had taken place due to combined negligence of the motorcyclist and the driver of Fiat in question the claims tribunal has recorded the finding that driving of the driver of Fiat Uno. The claims tribunal has recorded the finding that at the time of accident the Fiat was going towards down and, therefore, the accident had occurred due to negligence of the driver of the Fiat.

10. While deciding as to whether the claim petition is bad by not impleading the owner of the motorcycle and the insurance company with which the said motorcycle was insured as parties, the claims tribunal has recorded the finding that since the accident had taken place due to rash and negligent driving by the driver of Fiat, the claim petition is not bad by non-joinder of parties by not making the registered owner of the motorcycle and the insurance company as parties.

11. While deciding as to whether the Fiat Uno was insured with the New India Assurance Company, relying upon the insurance policy No. 211976 the claims tribunal has recorded the finding that the Fiat Uno was insured with the New India Assurance Company Limited.

12. While deciding as to whether the driver of Fiat Uno was holding a valid driving license, the claims tribunal has relied upon the driving license of Pankaj Bhalla i.e. paper No. 13 ga. The said diving license was valid from 18-2-1997 to 17-2-2017. The claims tribunal, therefore, has recorded the finding that the driver of Fiat Uno was holding a valid driving license at the time of accident.

13. While deciding with regard to quantum of compensation, the claims tribunal has taken into consideration the medical and taxi bills amounting to Rs. 56,828.30. Further, the claims tribunal has recorded the finding that the claimant could have failed to get the bills of some medicines. Therefore, the claims tribunal has awarded a sum of Rs. 60,000/- towards medical expenses. The claims tribunal has further assessed the monthly income of the deceased to the extent of Rs. 6,000/- per month and has awarded a sum of Rs. 30,000/- towards loss of income for 5 months. So far as mental and physical agony is concerned, the claims tribunal has awarded a sum of Rs. 10,000/- in addition to these the claims tribunal has awarded a sum of Rs. 50,000/- towards future operation and partial disability. Thus, a sum of Rs. 1,50,000/- has been awarded by the claims tribunal in total.

14. Counsel for the Appellant has submitted that the claims tribunal has awarded excessive compensation.

15. In *Kashmir Singh vs. Santosh Singh Patiner*, 2007 (2) U.C. 825, in paragraph 12, it has been stated that the Tribunal had to follow the summary procedure and tribunal also possessed the power of the Civil Court mentioned in the above provisions. In paragraph 13 of the judgment, it has been stated that if the claimant files a claim petition before the Tribunal and he does not adduce any evidence, the claim petition cannot be allowed without supporting evidence of the claimants, there may be cases where certain documents are produced. If those documents had not been connected by any oral evidence, it cannot be said that those documents are genuine. The general principle of evidence would guide the Tribunal while deciding the claim petition. The Bench has also observed that in the event a certificate of medical Board was produced before the Tribunal certifying the disability of the claimant and he did not pray for production of the certified copy of document and insists the Tribunal to read it in evidence without proving its genuineness, the genuineness of the said document without examining the doctor, who allegedly issued the said certificate cannot be accepted. The observation are quoted below:

Supposing a certificate of medical board was produced before the Tribunal certifying the disability of the claimant and he did not pray for production of the certified copy or document and insists the Tribunal to read it in evidence without

proving its genuineness. In case, the contention of the claimant is accepted the Tribunal would not only accept genuineness of the said document but also rely upon its contents without examining the doctors who allegedly issued such certificate. If any document is public document, in such a case, by production of a certified copy, the contents of the document or part of the document can be proved. It is also settled position by now that merely providing the handwriting of the person who had written a document, the veracity of the statement made in the said document cannot be proved. Such person must depose before the Court in support of the contents and would face cross examination of the opponent. Otherwise such document can merely be taken into consideration for the purposes of showing that such document was issued once its genuineness is proved. But whether the contents of the certificate are correct or not, such facts cannot go into the evidence unless the author of the document deposes before Court and faces cross examination. The contents of a document without examining the author are worst pieces of hearsay evidence. 24. Before parting with the case, we would like to lay down certain guidelines for the Tribunal for hearing of the claim petition. We have noticed during the hearing of some cases that the bills filed by the claimant were not properly proved. Even in some cases the claimants had not produced the direct evidence to prove their claims.

16. In the aforesaid judgment, therefore, the reference has been made for disability certificate.

17. The said judgment has also come up for interpretation in *The Oriental Insurance Company Limited v. Shri Sandeep Singh and Anr.* 2007 (3) U.C. 1563, wherein Paragraph 14 it has been observed by the Division Bench as under:

14. It is well settled position of law that mere filing of the photocopy of the original document is not sufficient to prove the contents of the document. The claimant should have filed the original disability certificate before the learned Tribunal. He should have called the doctor before the learned Tribunal so that his statement could have been recorded and the veracity of the contents of the document made in the said document could be proved. This Court had already discussed this aspect in detail in *Kashmir Singh (Supra)* by relying upon the judgment of the Hon'ble Apex Court rendered in *A.P. SRTC v. P. Thirupal Reddy* 2005 (12) SCC 189. The learned Tribunal had already awarded the compensation to the claimant on the ground of disability. If this Court proceeds to examine the doctor and direct the claimants to produce the original disability certificate and if any order is passed against the parties to the claim petition after appreciation of such evidence, the parties would be deprived of their right of first appeal against the said finding.

18. In the aforesaid reference, it has been stated that the Tribunal had awarded the compensation on the ground of disability, if this Court proceeds to examine the doctor directing him to provide original disability certificate and if any order is passed in the claim petition in that connection reference has been made with regard to *Kashmir Singh*.

19. In the present case, the claimant himself was examined, who has proved the medical bills and also injury report of the injuries received by him. Therefore, the aforesaid case law is distinguishable.

20. In the judgment of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the Apex Court has observed as under:

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress of life.

17. The claim under SI. No. 16 for pain and suffering and for loss of amenities of life under SI. No. 17, are claims for non-pecuniary loss. The Appellant has claimed lump sum amount of Rs. 3,00,000/- each under two heads. The High Court has allowed Rs. 1,00,000/- against the claims of Rs. 6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.

21. Keeping in view the fact that the leg of the claimant remained plastered for a period of 45 days and he remained in hospital for several days, I do not find that the compensation awarded by the claims tribunal is exorbitant. The contention advanced by counsel for the Appellant is forceless and as such, I find no merit in the appeal. Appeal, therefore, is liable to be dismissed.

22. Consequently, appeal is dismissed. No order as to costs.