

(2006) 11 UK CK 0021

In the Uttarakhand High Court

Case No : Appeal From Order No's. 168 of 2002 and 207 of 2005

The New India Assurance Company Ltd.

APPELLANT

Vs

Pushkar Singh and Others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 11 UK CK 0021

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : R.B. Agrawal, for the Appellant; Pankaj Purohit, for Fateh Singh, R.P. Nautiyal, for Jai Singh and G.S. Negi, for Pushkar Singh, for the Respondent

Judgement

J.C.S. Rawat, J.—Since both the appeals have arisen out of the accident of Truck No. UP 05-0078 on 16-10-1998 at 3:30 pm, therefore, both the appeals have been heard together and are being disposed of by this common judgment.

2. Appeal from Order No. 168/2002 u/s 173 of the Motor Vehicles Act, has been filed by the New India Assurance Company Ltd. against the award dated 07-05-2002 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli (hereinafter referred as Tribunal"), in M.A.C.P. No. 16/1999 Pushkar Singh v. The New India Assurance Company and Ors. arising out of the accident of Truck No. U.P. 05-0078 on 16-10-1998 at 3:30 pm. In M.A.C.P. No. 16/1999 the learned Tribunal had awarded a sum of Rs. 3,14,700/- to the claimants against the New India Assurance Company Ltd. alongwith interest @ 6% annum from the date of filing of the claim petition till the date of payment.

3. Appeal from Order No. 207/2005 u/s 173 of the Motor Vehicle Act has been filed by the claimants against the award dated 04-07-2000 passed by the Tribunal, Chamoli in M.A.C.P. No. 27/1999 Roopsi Kunwar and Ors. v. New India Assurance Company and Ors. arising out of the aforesaid accident dated 16-10-1998. But, in claim petition No. 27/1999 the learned Tribunal had awarded a sum of Rs. 50,000/- to the claimants under the "No Fault Liability". Apart this,

Rs. 2000/- for last rites had been awarded to the claimants. Thus, the Tribunal had awarded a sum of Rs. 52,000/- to the claimants as compensation. The liability to pay the compensation of amount was fastened upon the New India Assurance Company. The claimants would get interest @ 10% per annum from the date of filing of the claim petition till the date of payment.

4. The facts in nutshell are that two claim petitions bearing Nos. 16/1999 Pushkar Singh v. The New India Assurance Company and Ors. and No. 27/1999 Roopsi Kunwar and Ors. v. New India Assurance Company and Ors. were filed before the learned Tribunal alleging therein that on 16-10-1998 the deceased-Dheer Bahadur and the injured-Pushkar Singh were travelling from Sonla to Kandara in the Truck No. UP 05-0078, which was being driven by its driver Jai Singh. When the said Truck was on the way at about 3:30 p.m., all of a sudden it met with an accident in which Dheer Bahadur and the conductor Narendra Singh died on the spot and Pushkar Singh sustained grievous injuries on his person.

5. The opposite parties filed their written statements and contested the case. Jai Singh driver of the Truck had stated in the written statement that the accident occurred due to the technical defect in the vehicle and he was having a valid driving licence at the time of accident. The Truck was insured with the New India Assurance Company. Fatah Singh, who was the owner of the Truck, has stated in the written statement that the driver of the vehicle was not responsible for the accident. The accident occurred due to breakage of "Pusta" (supporting wall of the road). It was further stated that the vehicle was insured with the New India Assurance and the liability, if any, was of the insurer.

6. On the basis of the pleadings, the learned Tribunal framed necessary issues in both the claim petitions. In claim petition No. 16/1999 (A.O. No. 168/2002), the learned Tribunal had held that the driver of the offending Truck was rash and negligent at the time of accident and due to which the accident took place. So far as the claim petition No. 27/1999 (A.O. No. 207/2005) is concerned, the learned Tribunal had held that the accident occurred due to the breakage of "Pusta" (supporting wall of the road) and as such the driver of the offending Truck was not rash and negligent at the time of accident. It was further held that there was no negligence on the part of the driver of offending truck and the accident occurred due to vis-major.

7. Feeling aggrieved by the aforesaid impugned awards, the present appeals have been filed.

8. Learned Counsel for the claimants as well as for the New India Assurance Company contended that the learned Tribunal had held in claim petition No. 16/1999 (AO No. 168/2002) that the driver of the offending Truck was rash and negligent at the time of accident and due to which the accident took place. It was further contended that the learned Tribunal had held in claim petition No. 27/1999 (A.O. 207/2005) that the accident occurred due to the breakage of "Pusta" (supporting wall of the road) and as such the driver of the offending

Truck was not rash and negligent at the time of accident. It was further contended that there are two different findings for the similar act of the driver of the offending vehicle.

9. It is pertinent to mention here that both the claim petitions had arisen out of one accident of offending Truck No. UP 05-0078 on 16-10-1998 at about 3:30 pm in which Dheer Bahadur and the conductor Narender Singh died on the spot and Pushkar Singh sustained the grievous injuries on his person. In both claim petitions, the Tribunal had given contradictory findings with regard to the cause of accident.

10. The perusal of the awards reveal that the findings recorded by the Tribunal in both claim petitions are inconsistent with each other and thus the findings cannot be reconciled. If the learned Tribunal would have consolidated both the claim petitions, there would not have been any inconsistent findings. Therefore, we have no option but to set aside the findings given in both the claim petitions. It would be just and proper in the interest of the parties and in the interest of justice to set aside the impugned judgment passed in both claim petitions and to remand back the matters to the Tribunal to decide them afresh. It would be just and proper to direct the Tribunal to consolidate both the claim petitions and decide them so as to avoid the inconsistency in the findings.

11. In view of the above, the impugned awards dated 07-05-2002 and 04-07-2000 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli in M.A.C.P. Nos. 16/1999 and 27/1999 respectively are set aside. The matters are remanded back to the learned Tribunal with directions to dispose of both claim petitions in light of the observations made above. However, it is made clear that the amount already withdrawn by the claimants in the claim petitions shall be adjusted by the Tribunal at time of disposal of the claim petitions. In case, the Tribunal comes to the conclusion that the claimants are not entitled to the rest amount kept in deposit before the Tribunal that would be returned to the insurer after disposal of the claim petitions. The Tribunal is directed to dispose of the matters expeditiously, preferably within a period of four months from the date of the receipt of copy of this order.

12. Both the Appeals are disposed of accordingly. The parties shall bear their own costs.