
(2008) 03 UK CK 0037
In the Uttarakhand High Court
Case No : A.O. No. 313 of 2003

The New India Assurance Company Ltd.	APPELLANT
Vs	
Smt. Ratna Devi and Others	RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1), 173

Citation : (2008) 03 UK CK 0037

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

Bench : Single Bench

Advocate : T.A. Khan, for the Appellant; Seema Sirohi and Vinod Nautiyal, Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of the Motor Vehicle Act, 1988, has been preferred by the New India Assurance Company, against the judgment and award dated 29-7-2003, passed by Motor Accident Claim Tribunal, Uttarkashi, (hereinafter referred as the Tribunal") in MACP No. 07 of 2001, Smt. Ratna Devi and Ors. v. Gopal Singh and Ors. whereby the Tribunal" decreed the claim petition for a sum of Rs. 1,40,000/- along with interest @ 7% per annum, against the New India Assurance Company.

2. Brief facts giving rise to this appeal, are that, Madiya (deceased), on 2-2-1998, along with some other persons, was going in D.C.M. Toyota Truck bearing registration No. 817 for transporting the stone-slates (Pathals). The Truck driver was driving the vehicle rashly and negligently. When the Truck reached near Silada Toke, the driver tried to kill porcupine (Sahi) by crushing in beneath the tyre of the truck, the conductor opened the window of the truck and the driver drove the truck at a high speed, due to which Madiya fell out of the window and he died instantaneously due to injuries sustained by him. According to the claimants the deceased at the time of accident was 50 years of age and he used to earn Rs. 4,500/- per month from the profession of black-smith and

mason. The claimants, Smt. Ratna Devi (widow of the deceased) and Km. Anita and Master Om Prakash, minor children of the deceased), preferred the claim petition for award of Rs. 7,40,000/- in lieu of death of Marhiya.

3. The Opposite Party/owner and driver filed joint written statement before the Tribunal, denying the rash and negligence on the part of the driver and conductor of the offending truck. They alleged that the deceased himself jumped out of the truck and his death was occurred due to his own negligence. They also alleged that the truck was insured with New India Assurance Company and the Insurance Company is liable to pay the compensation.

4. The Opposite Party/New India Assurance Company also contested the claim petition by filing its written statement, alleging therein that in fact the deceased was murdered and in order to get compensation the death of the deceased was tried to give shape of accident. It was also alleged by the insurer that the claim petition was preferred in collusion with the owner and driver of the offending truck. The insurer filed application to amend its written statement, which was allowed by the Tribunal. By amended written statement, the insurer pleaded that at the time of accident in all nine persons, including driver and conductor, were travelling in the offending truck, whereas the truck was a goods carrier and therefore, breach of terms of insurance policy was committed by the owner/driver of the vehicle, hence the insurer cannot be held liable to pay compensation.

5. On the basis of pleadings of parties, the learned Tribunal framed the following issues in the claim petition:

1-Whether Sri Madiya died in a motor vehicle accident on 2-2-1998 at Silada on Pujargaon-Kaprada motor road due to rash and negligent driving of Truck registration 817?

2-Whether the cause of death of Sri Madiya was not accident but he was murdered, as alleged in para-7 of W.S. of Insurance Company?

3-To what amount of compensation and from which of the Respondents, the Petitioners entitled?

4-Whether claim petition is barred by law of Indian Limitation Act, as claim petition is filed beyond three years?

5-Whether the driver of the vehicle did not hold an valid driving license at the time of accident? If so, its effect?

6. Thereafter, parties led evidence in support of their case. The learned Tribunal after having considered the material on record and hearing learned Counsel for the parties, awarded a sum of Rs. 1,40,000/- as compensation to the claimants along with interest @ 7% per annum from the date of filing of the petition, till the final date of payment, against the New India Assurance Company.

7. Feeling aggrieved, the New India Assurance Company has preferred this appeal.

8. None has appeared on behalf of the Respondent Nos. 4 and 5 (owner and driver of the offending truck) in spite of sufficient service. I have heard learned Counsel for the Appellant and the learned Counsel appearing on behalf of the claimants/Respondents and perused the record.

9. Sri T.A. Khan, learned Counsel for the Appellant has argued that the deceased was travelling in the offending truck as a gratuitous passenger, therefore, it is a case of clear breach of the condition of insurance policy, hence under these circumstances the Insurance Company cannot be held liable to pay the amount of compensation.

10. The record reveals that the Insurance Company vide application dated 9-5-2003 sought amendment in the written statement. The amendment application of the Insurance Company was allowed by the Tribunal. The Insurance Company by amendment in the written statement, has taken specific plea that in the offending vehicle total 9 persons were travelling at the time of accident. It has also been pleaded that the offending vehicle had a permit to transport the goods as it was not a passenger vehicle, therefore, the persons who were travelling in the vehicle at the time of accident were gratuitous passengers and under these circumstances the Insurance Company does not have any liability to pay the amount of compensation. The plea taken by the Insurance Company in its amended written statement reads as follows:

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11. It is, thus, clear that the Insurance Company had taken specific plea before the Tribunal that the deceased was travelling in the offending truck as a gratuitous passenger, but it appears, from the perusal of the judgment and award that the Tribunal has not discussed this point in the impugned judgment and award, in spite of specific plea taken by the Insurance Company. Further, the deposition of P.W.2, Jaipal Singh, who is an eye witness of the accident, reveals that he has stated therein that in all 13 persons were travelling in the truck in question at the time of accident. He further stated that he and 12 other persons had been travelling in the offending truck at the time of the accident. This witness in his cross-examination has stated that in the offending truck, Sarop Singh, Nihal Singh Dhama Lal, Shyam Das, he, Madiya, Bheempal Singh, Soban Singh and others were travelling at the time of accident. Further, when he was cross-examined by the Insurance Company, this witness has stated that in the offending truck at rear side 7-8 persons were sitting while along with driver in the front seat, 5 persons were travelling. It is, thus, quite clear, on the basis of the pleadings adduced by the Insurance Company before the court below as well as the evidence of eye witness itself, who was produced by the claimants that 12 to 13 persons were travelling in the offending truck at the time of accident. The owner of the vehicle has not come forward to establish as to what was the capacity of the passengers travelling in the offending truck at the time of accident. Therefore, it can be easily inferred that the deceased along with other persons was travelling in the truck in question as a gratuitous passenger. The

Hon"ble Apex Court in a decision reported in National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, . has held that-

the Act does not contemplate that a goods carriage shall carry a large number of passengers with a small percentage of goods as the insurance policy considerably covers the death or injuries either of the owner of the goods or his authorized representative. The provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle and the insurers would not be liable therefore. The words "injury to any person" in Section 147(1)(b) would only mean a third party and not a passenger travelling in a goods carriage whether gratuitous or otherwise.

12. In the instant case it has not been proved by an iota of evidence that the deceased was travelling in the offending truck along with the driver and cleaner as the owner of the goods. As per the evidence adduced in the case, in all 12 to 13 persons were travelling in the truck and the policy covered the risk only of the owner of the goods. Therefore, all the persons travelling in the truck in question along with the deceased could not be deemed to have travelled as owner of the goods loaded over the truck at the time of accident. Therefore, undisputedly, the deceased was travelling as a passenger and the contention of the insurer that the deceased was gratuitous passenger and the policy did not cover his risk, appears to be justified.

13. On the basis of the assessment of evidence available on record, I am of the firm view that the impugned judgment and award passed by the Court below against the Insurance Company is liable to be set aside as the Insurance Company does not have the liability to pay the amount of compensation awarded by the Court below to the claimants.

14. Learned Counsel for the Insurance Company has submitted before the Court that the entire awarded amount has been deposited by the Insurance Company before the Tribunal concerned. If it is so, the Insurance Company shall have the recoverable right to recover the amount of compensation from the insured.

15. Accordingly, the appeal is allowed. The impugned judgment and award is modified to the extent that the Insurance Company is not liable to pay the amount of compensation. However, as stated above, the Insurance Company has deposited the entire amount of impugned award before the Tribunal concerned, therefore, the Insurance Company is given the recoverable right against the owner of the ill-fated truck in question to recover the amount of the impugned award. The recovery shall be made in accordance with the observation made by the Apex Court in the case of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, .