

(2013) 04 AHC CK 0054

In the Allahabad High Court

Case No : First Appeal From Order No. 816 of 2013

The New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Reena and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 3 ACC 147 : (2013) 6 ALJ 191

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : S.C. Srivasatava, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—Heard Sri. S.C. Srivastava, learned counsel for the appellant and perused the impugned award as also the papers filed along with memo of appeal. The appellant being insurer of bus number UP 65 AR 8091 involved in the instant accident, has challenged the award dated 5.1.2013 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 24, Allahabad, in Claim Petition No. 545 of 2011, Smt. Reena v. Sanjay Kumar Pathak and others, whereby compensation of Rs. 5,01,000/- together with simple interest @ 7% per annum has been awarded to claimant respondent Nos. 1 to 5, on account of death of their bread earner Lavkush.

2. It appears that on 10.6.2011 at about 4 p.m. driver of the aforesaid bus driving the bus rashly and negligently dashed with the motorcycle of Lavkush who instantaneously died at the spot. It was further alleged that the deceased was a sailor and used to ferry boat at Sangam, Allahabad for pilgrims and his daily income was Rs. 300-350/-. The claim was resisted by the opposite parties. Owner of the bus denying the allegations of the claimants, contended that his vehicle was insured with the appellant with effect from 18.1.2011 to 17.1.2012 and driver of the bus was having a valid and effective driving licence on the date of the accident. The UPSRTC also filed written statement stating that the

offending bus was in its undertaking under an agreement and its owner and insurer are liable to indemnify the award. The appellant resisted the claim denying factum of the accident and other allegations of the claimant. The claimant examined herself as P.W.1 and produced Hukum Chandra P.W.2. They also filed several documents in support of their claim. The owner of the vehicle filed copies of registration certificate, insurance cover note, driving licence, agreement and fitness certificate of the vehicle. The appellant did not adduce any oral and documentary evidence.

3. The Tribunal after considering the evidence on record and after hearing parties' counsel, has held that the accident took place due to rash and negligent driving of the offending vehicle by its driver and caused fatal injuries to Lavkush who instantaneously died at the spot. Other issues regarding violation of the terms of insurance contract were decided against the appellant. On consideration of the age and income of the deceased, a sum of Rs. 5,01,000/- together with simple interest @ 7% per annum has been awarded to the claimant respondents.

4. Learned counsel for the appellant has raised the following contentions before us:--

1. that there was contributory negligence of the deceased in the accident;
2. that driving licence of the driver of offending bus was not valid and effective on the date of the accident; and
3. that the appellant was not a party to the agreement between owner of the bus and the UPSRTC, so they cannot be saddled with the liability to indemnify the award.

5. As regards contributory negligence of the deceased in the accident, the Tribunal has placed reliance on the testimony of Hukum Chandra P.W.2 who has stated that he has witnessed the accident; that police came at the spot and apprehended the bus and that in the accident there was no negligence of the driver of the motorcycle. He has reiterated these facts about the accident in his cross-examination. He has stated in his cross-examination that he did not lodge F.I.R. but had informed in laws of the deceased who were known to him. No contra evidence was led by the opposite parties to prove contributory negligence of the deceased in the accident. Thus, we find that learned Tribunal has not erred in deciding issue No. 1 against the opposite parties.

6. As regards the validity of driving licence of driver of the offending bus, the owner of the bus has stated in his statement that the driver had a valid and effective driving licence on the date of the accident. Learned counsel for the appellant has drawn our attention to the application filed on their behalf before the Tribunal whereby owner and driver of the vehicle were sought to be summoned but the Tribunal has rejected their application. It appears that two applications dated 21.11.2012 were filed on behalf of the appellant before the Tribunal which are annexure - 10 to the appeal and they were rejected by the

Tribunal vide order dated 5.12.2012, observing that copy of the driving licence of Inam Khan was already on record and the insurance company could have adduced evidence about its authenticity. It appears that these applications were filed by the appellant at the fag end of the case and in the application it was mentioned that driving licence was got verified from R.T.O., Kolkata and it was reported that driving licence number and driving licence are not clear so they cannot be verified. It is pertinent to note that report of the R.T.O., Kolkata was not filed before the Tribunal nor copy of the driving licence of driver Inam Khan has been filed along with memo of the appeal. It is trite law that burden to prove the validity or otherwise of driving licence of the driver of the offending vehicle squarely lies on the insurance company as they plead breach of the terms of contract and insurance almost in every case.

7. So far as the liability of the appellant to indemnify the award on the ground that the offending vehicle was under control of the UPSRTC through an agreement, is concerned, this point is no longer res integra which has now been settled by the Apex Court in Uttar Pradesh State Road Transport Corporation Vs. Kulsum and Others, .

8. No other point has been argued before us.

9. In view of the aforesaid reasons, we find that the appeal sans merit and is accordingly dismissed at the admission stage. The amount of statutory deposit by the appellant in this Court, be remitted to the Tribunal concerned within three weeks from today, for adjustment.