(2018) 05 UK CK 0019

In the Uttarakhand High Court

Case No : Appeal from Order No.251 of 2017

THE NEW INDIA ASSURANCE COMPANY LTD — APPELLANT

Vs

SMT SONIKA AND OTHERS — RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 173
Indian Penal Code, 1860 — Section 279, 304A, 334

Citation : (2018) 05 UK CK 0019

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : P.C. Maulekhi, Aditya Pratap Singh,

Final Decision : Dismissed

Judgement

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 28.02.2017 passed by

Motor Accident Claim Tribunal/IInd Additional District Judge, Roorkee, District Haridwar in Motor Accident Claim Petition No.174 of 2014 Smt.

Sonika and another vs. Brijpal and others, whereby the Tribunal has awarded a sum of ` 4,19,467/- to the claimants against The New India Assurance

Company Ltd along with 6% simple interest from the date of filing of the claim petition till the date of its realization.Â Â

2. Brief facts of the case are thatÂ on 31.05.2014 Pratap Singh (hereinafter to be referred as the deceased) was plying Santro Car of his friend,

bearing registration no.UK 08Q 9293, and was going from Tatwala to Chidiyapur. At about 10.30 pm, when he reached midway of Lahadper-

Chiryapur, a truck bearing registration no.UP20T 5363 which was being driven rashly and negligent, dashed with the car, resulting death of deceased at the spot and other occupants viz. Sri Anuj Kumar, Sri Surendra, Sri Ratan and Sri Rajesh in the car, became injured. F.I.R. of the incident was

lodged at P.S. Shyampur, on the basis of which, criminal case no.44/14 was registered against the driver of offending truck, under Sections 279, 334,

304A IPC. Deceased was hale and hearty man of 33 years and was having 9 bigha of agricultural land. Besides this, he also used to do business of

selling milk and was also a contractor. In this way, deceased was earning ` 20,000/- per month. With these averments, claimants-respondent nos.1 and

2, who are wife and mother of deceased, filed the claim petition, claiming compensation amounting to ` 98, 10,000/- and ` 50,000/- along with 9%

interest per annum from the opposite party.Â

3. Opposite party - Owner and driver of offending vehicle filed a joint written statement and denied most of the averments made in the claim petition.

In additional plea, it is alleged that Mehboob (opposite party no.4 herein) was the owner of the truck UP20T 5363 but on 21.01.2014 he had sold the

vehicle to Sandeep Kumar and since then Sandeep Kumar is the owner of the truck. After 21.01.2014, he never used the vehicle. It is also contended

in the written statement that as per their information, on the fateful day, truck was parked on the road side and the deceased, under the state of

intoxication, in a rash and negligent manner, dashed with the parked truck. It is also contended that driver of truck was having valid and effective

driving license and the truck was insured with The New India Assurance Company Ltd.

4. Opposite party â?" The New India Assurance Company Ltd. also filed its written statement, denying the averments made in the claim petition. In

additional pleas, it is alleged that the claimants are not the legal representatives of the deceased and the accident occurred on account of own

negligence of the deceased. In the alternative, it is alleged that driver of truck was not having valid and effective driving license and the owner of the

vehicle allegedly involved in the accident had no valid and effective R.C., fitness permit and insurance at the time of the alleged accident at the time of

alleged accident and alleged truck was being plied against the terms and conditions of the insurance policy. It is also alleged that the claim petition is

bad for non-joinder of necessary parties, as the claimants has not made owner and insurance company of the Santro car as party in the claim petition.

It is also alleged that the deceased, who was driving the car, was not having valid and effective driving license to ply the car and the owner of the car

also was not having valid and effective R.C., fitness, Insurance, etc. at the time of the alleged accident.Â

5. On the basis of pleadings of parties, Tribunal framed the following issues:

i) Whether on 31.05.2014 at about 10.30 pm in the midway of Lahadpur and

Chidiyapur, opposite party no.1 Brijpal, while driving truck bearing registration no.UP-20T 5363 in a very rash and negligent manner, dashed with the

Santro Car UP08Q 9293 of the deceased, resulting death of deceased Pratap Singh at the spot and caused injuries to other occupants in the car viz.

Anuj Kumar, Surendra, Ratan and Rajesh?

ii) Whether on the date of accident, truck bearing no.UP20T 5363 was insured with The New India Insurance Company Ltd.?

iii) Whether opposite party no.2 had sold the truck to Sandeep Kumar on 21.01.2014, and thus opposite party nos.1 and 2 had no concern with the

vehicle on the date of accident? iv) Whether the claimants are entitled to receive any compensation? If so, then how much and from which party?

6. Thereafter, the parties led their evidence. On behalf of the claimants, R.C. and fitness of truck in question, copy of driving license of truck driver,

R.C. of Santro car, driving license of deceased, death certificate of deceased, wedding card of deceased and claimant Smt. Sonika, copy of family

register of the deceased and copy of Khatauni, certified copy of chik F.I.R., certified copy of post-mortem report of the deceased, certified copy of

site-plan of the place of accident, copy of technical inspection report of the truck, certified copy of order dated 11.6.2014 regarding release of truck,

certified copy of charge sheet, were filed. In oral evidence, PW1 Smt. Sonika, PW3 Ratan and PW3 Rajesh were examined.Â

7. In documentary evidence, opposite party no.1 filed copy of driving license, insurance policy and fitness certificate, whereas, no oral evidence was

adduced by the opposite parties.

8. After hearing the parties and upon perusal of entire evidence, learned Tribunal passed the impugned judgment and award, as above.

9. On issue no.1, learned Tribunal held that accident had occurred due to negligence of driver of truck bearing no. UP-20T 536 and decided this issue

in favour of the claimants. On issue no.2, Tribunal has held that on the date of accident, offending truck was insured with the New India Assurance

Company Ltd. and accordingly decided this issue against the appellant Insurance Company. On issue no.3, Tribunal held that the onus of proving the

fact that the truck was sold to Sandeep Kumar by the opposite party nos.2 four months before the accident was on the opposite party nos.1 and 2, but

neither any evidence has been led by them nor any document has been filed by them so as to prove that opposite party no.2 had sold the truck to

Sandeep Kumar, while as per the release order of the Magistrate dated 11.06.2014, truck was released by opposite party no.2 in his favour and not by

Sandeep Kumar. Accordingly, tribunal decided issue no.3 against opposite party nos.1 and 2. On issue no.4, Tribunal held that there was contributory

negligence on the part of the deceased in the accident and in the facts and circumstances of the case, assessed 1/3rd contributory negligence of

deceased and held that the claimants will be entitled to receive 2/3rd compensation from the Insurance Company. As no evidence was led by the

claimant to prove the monthly income of the deceased, the Tribunal assessed the notional income of the deceased as ` 3,000/- per month and after

making an addition of 30% on the income towards future prospects, fixed the monthly income of the deceased as ` 3900/- per month, i.e., annual

income as ` 46,800/-. Keeping in view the number of claimants, Tribunal deducted 1/3rd towards personal expenses of the deceased, whereafter

annual dependency was assessed as ` 31,200/-. Further, the tribunal for the purpose of calculating the amount of compensation, after perusing the

entire evidence, fixed the age of the deceased between 31-35, and applied the multiplier of â??16â?? in view of Sarla Varma vs. Delhi Transport

Corporation [2009(20 TAC 677]. Thus, after applying multiplier of â??16â?? on the annual income, tribunal assessed the compensation as 31,200 x 16

= 4, 99,200/-. Besides this, Tribunal granted ` 25,000/- for funeral expenses, ` 1, 00,000/- towards love and affection and ` 5,000/- towards loss of

estate. In this way, total amount of compensation was assessed as ` 6, 29,200/-, which after deducting 1/3rd towards contributory negligence on the

part of the deceased, was calculated as ` 4, 19,467/-. Thus, on issue no.4, Tribunal held that the claimants are entitled to received compensation to the

tune of ` 4,19,467/- from the Insurance Company along with simple interest @ 6% per annum from the date of filing of claim petition till the date actual payment is made.Â Â Â

10. I have heard learned counsel for the parties and perused the entire record.

11. Learned counsel for the appellant has submitted that since the owner of the truck in question was plying his truck without any route permit at the

time of accident, hence, the Insurance Company is not liable to pay any compensation. This plea was also taken by the appellant before the Tribunal,

and in this regard issue no.2 was framed by the Tribunal. Tribunal has discussed this issue in detail and has recorded a finding that as per paper 65c

filed by the Insurance Company, permit of the truck was surrendered on 8.5.2015, meaning thereby that before 8.4.2015, permit of the vehicle was for

State of U.P. Tribunal further observed that the accident had taken place near Chidiyapur, within the limits of State of U.P. and Uttarakhand, thus, it

cannot be said that the truck was being plied without any permit on the date of accident. Findings recorded by the Tribunal on this issue as well as on

other issues, have been recorded by the Tribunal after proper appraisal of evidence and, therefore, require no interference. In the light of above,

argument advanced by learned counsel for the appellant is not sustainable.

12. It is also submitted by learned counsel for the appellant that prior to alleged accident, insured had transferred the truck to Mr. Sandeep while the

accident in question took place on 31.05.2014 as such the said truck was not under the control of the insured at the time of accident which is also a

breach of terms and condition of the insurance policy. In this regard, issue no.3 was framed by the Tribunal and findings were recorded by the

Tribunal therein, which I have already adverted to. In such view, this argument is again unsustainable in the eyes of law.

13. No other argument is raised by learned counsel for the appellant.Â

14. In the light of aforesaid, appeal lacks merit and the same is hereby dismissed.

15. Let the statutory amount, along with the interest accrued on it, if any, be remitted to the Tribunal concerned. Lower court record be also sent

back.Â Â

Â Â Â

