
(2010) 04 AHC CK 0286
In the Allahabad High Court

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Ram Prakash and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 173

Citation : (2010) 04 AHC CK 0286

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the appellant and learned Counsel for the respondents and perused the record.
2. Present appeal u/s 173 of the Motor Vehicles Act has been preferred against the impugned award in C.P. No. 363 of 2005, rendered by the Motor Accidents Claims Tribunal/Additional District Judge, Court No. 15, Lucknow on 30.3.2007.
3. In brief, on 3.8.2005 at about 11.30a.m., an accident occurred adjacent to Yadav Medical Store, Gauri Bazar, Lukcnw-Kanpur Road from motorcycle of the deceased with truck No. U.P.-32/T-4338. In consequence thereof, Phool Kumari succumbed to the injuries. It has been stated that the accident occurred because of rash and negligent driving on the part of the truck driver. A First Information Report was lodged and the heirs/successors of the deceased preferred a claim petition before the tribunal.
4. The trial Court framed four issues and the issue No. 1 relates to the accident occurred on 3.8.2005. Issue No. 2 relates to the driving licence. Issue No. 3 relates to insurance of the truck. Issue No. 4 relates to quantum of compensation.
5. The tribunal arrived to the conclusion that the income of the deceased was about Rs. 2,500/- per month. After deducting 1/3rd, it was assessed to Rs. 20,000/- per year. Multiplier of 17 has been used by the tribunal keeping in view

the age of the deceased while awarding compensation of Rs. 3,99,500/-.

6. Mr. U.P.S. Kushwaha, learned Counsel appearing on behalf of the appellant submits that while deciding issue No. 2 with regard to driving licence, the tribunal has not considered the fact that the driver was not having driving licence to ply transport vehicle. It has been stated that it amounts to violation of the licence condition, hence compensation is not payable.

7. On the other hand, learned Counsel appearing for the respondents submits that the driver was having driving licence for heavy motor vehicle, hence he was entitled to ply a truck and finding recorded by the tribunal does not suffer from any impropriety or illegality.

8. Since the only ground raised by the appellant's counsel relates to the driving licence, it is not necessary to delve over other grounds raised in the appeal. However, the tribunal while adjudicating the issues in question has considered and discussed the material evidence on record and recorded a finding based thereon and pleading of the parties.

9. So far as the driving licence is concerned, a perusal of the written statement filed by the appellant before the tribunal does not show that any objection was raised with regard to driving licence. In absence of any pleading in the written statement filed by the appellant, at appellate stage there appears to be no reason to entertain a new ground raised by the appellant. In case the appellant would have raised this plea before the tribunal, then the claimant would have got an opportunity to rebut the submission made by the appellant.

10. Moreover, while recording finding with regard to the driving licence, the tribunal has observed that the driver was having driving licence and on the date when the accident occurred, the licence was valid. Possession of driving licence of heavy motor vehicle seems to entitle the driver to ply the vehicle like truck.

11. However, it has been submitted that after amendment in Section 10 of the Motor Vehicles Act, the driver should have a driving licence to ply transport vehicle. In absence of specific pleading on record with regard to amendment in the Motor Vehicles Act as well as necessity of licence of transport vehicle, there appears to be no reason to consider this objection at this stage.

12. In view of above, the impugned award does not seem to suffer from any impropriety or illegality. The appeal is devoid of merit. It is accordingly dismissed. The appellant is directed to deposit the balance amount before the tribunal within two months from today and the tribunal shall proceed in terms of the award expeditiously. The amount deposited in this Court shall be remitted to the tribunal forthwith.