

(2007) 11 UK CK 0020

In the Uttarakhand High Court

Case No : Appeal from Order No. 458 of 2005

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Aan Singh and Others

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2007) 11 UK CK 0020

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : M.K. Goyal, for the Appellant; Bindesh Kumar Gupta, for the Respondent

Judgement

B.S. Verma, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988, (for short the Act) has been preferred against the judgment and award dated 31-08-2005 passed by the Motor Accidents Claims Tribunal/District Judge, Champawat (for short the Tribunal) in Motor Accident Claim Petition No. 20 of 2003, Aan Singh and Ors. v. Sunil Suri and Ors. whereby a compensation of Rs. 2,08,000/- has been awarded in favour of the claimants against the Insurance Company along with interest @ 6% per annum from the date of claim petition till payment.

2. Relevant facts giving rise to the present appeal, in brief, are that Jagat Singh son of claimant Nos. 1 and 2 and elder brother of claimant No. 3, aged 22 years and earning Rs. 2,000/- per month as cleaner of vehicle No. HR 38D/0627 lost his life in a motor vehicle accident. It was alleged that in the night of 10/11-2-2003 at about 1.30 a.m., when the deceased was repairing the head light of the said vehicle at place Kapachhera on Purana Gurgaon Road near G.D. Sandhu Petroi Pump, the offending vehicle No. HR 38H/0944 hit the deceased without blowing horn in a rash and negligent manner with the result Jagat Singh sustained grievous injuries and died at the spot. The report of the accident was lodged with police station Kapachhera, New Delhi at F.I.R. No. 23/03 dated

11-2-2003 under Sections 279, 304-A I.P.C. The claimants have arrayed owner of the offending Truck No. HR 38H-0944, the insurer of the said Truck as O.P. No. 2, owner of vehicle No. HR 38D/0627 as O.P. No. 3 and its insurer as O.P. No. 4 to the claim petition. Claimants have claimed compensation of Rs. Seven lacs for the death of the deceased.

3. The opposite party Nos. 1 and 3 did not put in appearance in the claim petition to contest the case, hence the petition proceeded ex-parte against them. The opposite party No. 2 filed his written statement and denied the allegations made in the petition. It was asserted that no information was given to the insurance company regarding the accident. It was asserted that in case of violation of policy conditions, the insurance company would not be liable to pay compensation. The burden lay upon the owner to prove the cover note of insurance and to prove the registration certificate, permit, fitness certificate and other documents including the driving licence. It was alleged that the claim petition is defective for non-joinder of drivers of both the vehicles.

4. Opposite Party No. 4 resisted the claim petition and filed its written statement. It was asserted that no information was given to the insurance company and that the driver of the vehicle was not holding a valid driving licence at the time of accident. The amount claimed is excessive. Vehicle No. HR 38D/0627 was in a stationary position at the time of accident.

5. The learned Tribunal framed as many as eight issues in the case, recorded the evidence led by the parties, heard them and after perusing the evidence, it came to the conclusion that the motor accident resulting into the death of the deceased took place due to rash and negligent driving on the part of driver of Truck No. HR 38H/0944. The learned Tribunal also held that the accident in question has not occurred due to any negligence on the part of the driver of Truck No. HR 38D/0627. It was also concluded that the question of validity is not required to be examined. Learned Tribunal also held that the driver of the offending truck was having a valid driving licence at the time of accident. Learned Tribunal also held that the offending truck No. H.R. 38H/0944 was duly insured with the Oriental Insurance Company on the date of accident. On the point of quantum of compensation, the learned Tribunal came to the conclusion that the income of the deceased was Rs. 1,500/- per month thereby Rs. 18,000/- per annum. After deducting 1/3rd towards personal expenses of the deceased, loss of dependency was assessed Rs. 12,000/- per annum. The learned Tribunal considering the age of the deceased to be 22 years, applied multiplier of 17 and awarded a compensation of Rs. 2,04,000/- in addition to a sum of Rs. 2,000/- towards funeral expenses and loss of love and affection with a total of Rs. 2,08,000/- in favour of the claimants as against the Insurance Company-Appellant vide judgment and award dated 31-8-2005.

6. Aggrieved by the said award, the present appeal has been preferred by the insurance Company of the offending truck.

7. I have heard learned Counsel for the Appellant and Respondent No. 6 and perused the lower court record including the impugned award. None has appeared on behalf of the claimant-Respondent despite sufficient service.

8. Learned Counsel for the Appellant has submitted that the application of the Insurance Company which was moved u/s 170 of the Act was allowed by the learned Tribunal. Learned Counsel for the Appellant has contended that the driver of the offending truck was having a driving licence to drive light motor vehicle, while he was driving the offending truck, which is heavy motor vehicle, therefore, it cannot be said that the driver was having a valid driving licence at the time of accident.

9. In the written statement the Insurance Company has taken a plea that the owner of the vehicle has to prove the validity of driving licence. A copy of the driving licence has been filed by the Appellant itself before the Tribunal as paper No. 37-C on record. The learned Tribunal has dealt with the point of validity of driving licence and has held that the driver of the offending vehicle was having a valid driving licence. According to the Appellant, the driving licence is valid for driving Light Transport Vehicle. It is interesting to note the Insurance Company-Appellant did not make any effort to adduce evidence to the effect that the offending vehicle is not covered by the term Light Transport Vehicle or that the offending vehicle was a Heavy Transport Vehicle. Even the Surveyor of the Appellant who obtained the copy of the driving licence has not appeared in the witness box.

10. It is significant to note that the claimants have filed paper No. 8-C/20 wherein the class of offending vehicle is stated to be HTV. This paper is a Photostat copy of the registration certificate issued by the District Transport Officer, Faridabad (Haryana). However, insurance Company-Appellant has not admitted the genuineness of this document. It was open for the Appellant to have examined the concerned officer of the Transport Department to establish that the offending vehicle was a Heavy Transport Vehicle. Be that as it may, it was for the Insurance Company to have led cogent evidence on the point, but the Appellant has not thought it proper to file any evidence even at the appellate stage. It is pertinent to note that the copy of the driving licence of the driver of the offending vehicle was filed by the claimant as paper No. 8-C/21. This document bears an endorsement that the driver is authorized to drive for H.T.V. with effect from 3-10-2001. The genuineness of this document has been denied, but the Appellant has placed reliance on paper No. 37-C, which bears the same authorization. The accident in question took place on 11-2-2003, therefore, the driver of the offending vehicle was fully competent to drive HTV. The contention of the learned Counsel for the Appellant is not acceptable.

11. Learned Counsel for the Appellant has urged that the multiplier of 17 as applied by the learned Tribunal is on the higher side, because the deceased Jagat Singh was aged about 22 years and it is not disputed that he was unmarried at the time of the accident and the claimants are his father, mother and minor

brother. In such event, the multiplier has to be applied on the age of the parents of the deceased and not on the age of the deceased as in the case of married person. The argument of the learned Counsel has some force. In my view, the learned Tribunal has erred in applying the multiplier 17. The father of the deceased has mentioned his age 49 years and the age of the mother 40 years in the claim petition. The Apex Court in the case of *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, has held that where the claimants are parent of the deceased, the multiplier should not be more than 10.

12. Learned Counsel for the Appellant has submitted at the most the learned Tribunal have applied the multiplier of 10. Learned Counsel has placed reliance upon the Division Bench of this Court in case of *Jogender Singh and Anr. v. The New India Assurance Company and Anr.* 2006 (2) U.D. 431 wherein the ratio of the Apex Court judgment has been followed on the point of multiplier. Accordingly, I hold that the multiplier of 10 should have been applied in the present appeal instead of multiplier of 17. The impugned award is liable to be modified to that extent. The learned Tribunal has held the loss of dependency at the rate of Rs. 12,000/- per annum. By applying the multiplier of 10, total loss of dependency comes to Rs. 1,20,000/-. The learned Tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses and loss of love and affection. Thus the claimants are entitled to total compensation of Rs. 1,24,000/- instead of Rs. 2,08,000/- as held by the Tribunal.

13. For the reasons and discussion aforesaid, the appeal preferred by the Insurance Company deserves to be partly allowed. The impugned award is liable to be modified accordingly. Rest of the findings recorded by the Tribunal are liable to be maintained.

14. The appeal is partly allowed. The claimant-Respondent Nos. 1 to 3 are entitled to get compensation of Rs. 1,24,000/- (Rs. One lac twenty-four thousand) along with interest @ 6% p.a. as awarded by the learned Tribunal. Out of total amount of compensation, a sum of Rs. 40,000/- shall be paid to the claimant No. 3, who has already attained the majority much earlier and the rest of the amount shall be shared by the father and mother of the deceased equally. Costs easy.

15. The amount in deposit with this Court, if any, be remitted to the Motor Accidents Claims Tribunal concerned, for being paid to the claimants. It is made clear that in case the amount deposited by the Appellant in compliance of interim order dated 18-10-2005 before the Tribunal is found to be excess after working out the total compensation including the up-to-date interest, the same shall be refunded to the Appellant-Insurance Company.