

(2008) 12 UK CK 0022
In the Uttarakhand High Court
Case No : A.O. No. 161 of 2007

The Oriental Insurance Company Ltd.	APPELLANT
Vs	
Smt. Neela Devi and Others	RESPONDENT

Date of Decision : 30-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1), 163A, 173

Citation : (2009) 1 UC 602

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

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, T.C. Pandey, for the Appellant; Mamta Joshi, for Respondents Nos. 1 to 5 and Lalit Sharma, for the Respondent

Judgement

B.C. Kandpal, J.—This appeal u/s 173 of Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 14-3-2007, passed by Motor Accident Claims Tribunal/District Judge, Nainital, in MACT Case No. 51/2006, Smt. Neela Devi and Ors. v. Baldeo Singh and Anr.

2. Brief facts of the case are that deceased Kundan Singh Adhikari was employed as driver on Truck No. HR 38-C/8491 owned by Baldeo Singh. On 5-11-2005 when he was carrying the said truck to Ghaziabad from Bhiwadi he stopped the said truck in the way and got down from it. Suddenly an unknown vehicle dashed him due to which he sustained grievous injuries and he succumbed to the injuries at the spot itself. According to the claimants the deceased used to earn 4,500/- per month. Therefore, the claimants preferred claim petition for a sum of Rs. 5,50,000/- in lieu of death of the deceased.

3. The opposite party No. 1, owner of the offending vehicle contested the claim petition and alleged that the deceased Kundan Singh was employed as driver on his truck and he used to give him a monthly salary of Rs. 3,000/- plus Rs. 50/- towards daily food expenses. He has admitted the death of the deceased in the accident and alleged that the deceased was having valid driving license at the time of accident and the truck was insured with Oriental Insurance Company for

the period 10-12-2004 to 9-12-2005.

4. The opposite party No. 2 Oriental Insurance Company also contested the claim petition and denied the allegations of the Petitioners and alleged that the deceased himself was driving the truck at the time of accident and he does not fall in the category of third party hence the petition is not maintainable u/s 163-A of the Motor Vehicles Act. The insurer also alleged that exaggerated income of the deceased has been mentioned by the claimants.

5. The Tribunal on the pleadings of parties framed the following issues in the claim petition:

1- Whether on 5-11-2005, when deceased Kundan Singh Adhikari, who was employed as driver on Truck No. HR 038-C/8491, was going from Bhiwadi to Ghaziabad, he was dashed by some unknown vehicle in the midnight near Subhash Hotel Sahpur, N.H.-8, Bilaspur, due to which he succumbed to the injuries at the spot ?

2- Whether the accident has occurred by the use of truck No. HR-38-C/8491 ?

3- Whether on the date of accident deceased Kundan Singh Adhikari was driving Truck No HR-38-C/8491 and he does not come in the category of third party ?

4-Whether the petition is not maintainable u/s 163-A of the Motor Vehicles Act ?

5- Whether the owner of the vehicle has breached the conditions of insurance policy ?

6- Whether the claimants are entitled to get the compensation ? If so, how much and from whom ?

6. Parties adduced evidence in support of their case. The learned Tribunal after hearing Learned Counsel for the parties and considering the material available on record, decreed the claim petition for a sum of Rs. 4,07,700/- along with interest @ 6% per annum from the date of filing the petition till the date of actual payment, against the Oriental Insurance Company.

7. Feeling aggrieved by the aforesaid judgment and award the Insurance Company has preferred this appeal before this Court.

8. I have heard Sri V.K. Kohli, learned Senior Advocate, assisted by Sri T.C. Pandey, appearing on behalf of the Appellant, Ms. Mamta Joshi, Learned Counsel for the claimants/Respondents 1 to 5 and Sri Lalit Sharma, Learned Counsel for owner of offending truck/Respondent No. 6 and perused the record.

9. From perusal of record it reveals that it is the admitted case of the owner of the offending truck that the deceased at the time of his death had gone to Ghaziabad by the truck No. HR-38-C/8491 in order to transport goods from Bhiwadi and at the place of accident he stopped the vehicle in order to have his meal in a hotel and while he was crossing the road he was dashed by some unknown vehicle and died at the spot. Therefore, the deceased comes in the

category of third party as he was dashed by unknown vehicle while he was crossing the road on foot. The tribunal also recorded a finding that the deceased was employed on Truck No. HR 38-C/8491 and he died during the course of his employment, therefore, the petition is maintainable under the provision of Workmen's Compensation Act. The tribunal further recorded a finding that the driving license of the driver was not filed on record and under the provision of Workmen's Compensation Act it was not necessary to bring the driving license on record. It is worthy to mention here that the insurance company neither took this plea before the court below that the driver was not having valid license or in any case he was not qualified to drive the truck in question. Therefore, to my mind the insurance company cannot take this plea at the stage of appeal that the driver of the offending truck was not having valid driving license. It is further clear from the record that the accident took place when the offending truck was in use. The other documents relating to the truck have been filed on record, hence the tribunal gave a finding that the owner of the truck did not commit any breach of condition of insurance policy. The above findings given by the learned tribunal need no interference.

10. So far as the quantum of compensation is concerned, the tribunal has assessed the monthly income of the deceased as Rs. 4000/-. According to the claimants the deceased used to get a salary of Rs. 4,500/- per month, but the owner of the vehicle has pleaded that he used to give a monthly salary to the deceased as Rs. 3,000/- plus Rs. 50/-towards daily food expenses. Therefore, the tribunal has rightly taken the monthly income of the deceased as Rs. 4000/- and after deducting Vz towards personal expenses the net monthly dependency was taken as Rs. 2000/- and after applying the relevant factor of 203.85 at the age of 31 years, the total dependency was assessed as Rs. 4,07,700/-. Therefore, the quantum of compensation awarded by the tribunal cannot be said to be unreasonable.

11. The sole point involved in this case to which my attention has been invited by the Learned Counsel for the Appellant is as to whether the tribunal having the jurisdiction to decide the case under the Motor Vehicles Act had exceeded its jurisdiction by applying the principle of Workmen's Compensation Act while deciding the petition filed under the Motor Vehicle Act. My attention has been invited towards the issue No. 6 decided by the tribunal in this regard. The Learned Counsel for the Appellant has thus submitted that the jurisdiction of the Workmen's Compensation Commissioner is altogether different while the jurisdiction to decide the case under the Motor Vehicles Act is completely different and the learned Judge while deciding the case under the Motor Vehicles Act had no jurisdiction to decide the case applying the principle of Workmen's Compensation Act.

12. The Learned Counsel for the Respondents on the other hand has made rival contention that the Insurance Company in any case shall have to pay the amount of compensation which is prescribed under the Workmen's Compensation Act,

and the impugned judgment and awarded passed by the tribunal cannot be set aside on this sole ground.

13. It is true that the tribunal has discussed this aspect while deciding issue No. 6. The tribunal has recorded a finding that the deceased was a driver on the truck in question and he died while discharging his duties. It has further been observed that the deceased was workman of the vehicle owner. The tribunal has also awarded the compensation by applying the principle under the Workmen's Compensation Act.

14. However, the tribunal has fell in error directing that the total amount of compensation awarded shall be paid by the insurance company. The tribunal should have directed the insurance company to pay the amount of compensation to which it was liable under the Workmen's Compensation Act. The Hon''ble Apex Court in a case reported in 2005 (3) SC 587, National Insurance Company Ltd. v. Prembai Patel and Ors. has held as under:

8. The main question which requires consideration in this appeal is, whether the Appellant insurance company is liable to pay the entire amount of compensation awarded to the claimants or its liability is restricted to that which is prescribed under the Workmen's Act. In this connection Learned Counsel for the Appellant has drawn our attention to the insurance policy, which had been taken by the owner for the concerned vehicle, and, especially to the following endorsements made therein:

1. Policy No. 320801/31- A policy for 92-93/21/01753 Act Liability.
2. Premium (Act Rs. 12451- Liability)
3. Limitation as to use : For Act only cover At the end of the policy the following is written:

Important Notice

The insured is not indemnified if the vehicle is used or driven otherwise than in accordance with this schedule. Any payment made by the company by reason of wider terms appearing the certificate in order to comply with the Motor Vehicle Act, 1988 is recoverable from the insured. See the Clause headed Avoidance of Certain Terms And Right of Recovery in the policy.

Note- This Schedule, the attached policy and the endorsements mentioned here above shall be read together and any word or expression to which a specific meaning has been attached in any part of this policy or the Schedule shall bear the same meaning wherever it may appear.

15. The Hon''ble Apex Court has further observed in the same judgment as under:

It clearly shows that any such liability, which mandatorily required to be covered by a policy under Clause (b) of Section 147(1), has to be satisfied by the

insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in Sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, here any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act.

16. In view of the observation made by the Hon'ble Apex Court in the cited case, I am of the view that the judgment and award passed by the tribunal cannot be set aside with regard to its maintainability. However, I am of the view that the appeal filed by the insurance company is liable to be allowed partly and the impugned judgment and award is to be modified to the extent that the insurance company is liable to pay the amount restricted to that which is prescribed under the Workmen's Compensation Act. Sri V.K. Kohli, learned Senior Advocate appearing for the Appellant has submitted that as per the calculation the liability of the insurance company comes to Rs. 3,08,925/- only. The insurance company is thus liable to pay the amount restricted to that, which is prescribed under the Workmen's Compensation Act, i.e. Rs. 3,08,925/- along with interest indicated in the impugned judgment and award. Rest of the amount awarded by the tribunal shall be paid by the owner of the concerned vehicle.

17. For the reasons recorded above, the appeal is partly allowed. The impugned judgment and award is modified up-to the extent that out of the awarded amount of Rs. 4,07,700/-, the Appellant/Oriental Insurance Company is liable to pay a sum of Rs. 3,08,925/- along with the interest indicated in the impugned award, and the rest of the amount shall be paid to the claimants along with the interest indicated in the award, by the owner of the vehicle in question, i.e., Respondent No. 6.

18. Let the statutory amount be remitted to the tribunal concerned. The insurance company shall be entitled to withdraw the excess amount, if any, deposited before the tribunal.