(2008) 07 UK CK 0040

In the Uttarakhand High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Gyan Lal and Another RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(2), 165, 166, 173

Citation : (2010) ACJ 2246 : AIR 2009 Utt 49 : (2008) 3 UC 1840 : (2008) 2 UD 189 : (2006) 2 UD 189

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

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 6-9-2002, passed by Motor Accident Claims Tribunal/District Judge, Rudraprayag, in MACP No. 37/2001.

2. Brief facts of the case, giving rise to this appeal, are that Gyan Lal used to carry goods from Gaurikund to Shri Kedarnath after loading the same in the mules. On 12-5-2001 at about 6.30 p.m. his mule was tied by the side of the road at Syalpani, new Bus Station, Gaurikund. The driver of Bus No. U.G.Y. 8735 came there in a rash and negligent manner and overturned the bus, due to which the mule was crushed by the bus and died at the spot. The Tarpaulin worth Rs. 1,500/-, saddle worth Rs. 5,000/-, two umbrellas worth Rs. 200/-, Sunde of mules worth Rs. 300/-, wearing clothes worth Rs. 500/- and two bags of straw kept inside the thatch (Chappar) were also damaged, According to claimant, the mule was purchased by him at the cost of Rs. 40,000/- and he was earning Rs. 22,000/- per month from the said mule. He used to spend Rs. 6,000/- per month on the food of the mule. Therefore, he filed claim petition to the tune of Rs. 3,57,860/- in lieu of death of the mule and damages to other goods.

3. The opposite party No. 1, United India Insurance Company filed the written statement alleging therein that none of the party has informed the Insurance Company of the accident, hence, the accident could not be investigated. The

Insurance Company also alleged that the registration, permit, and fitness certificate of the offending bus have also not been checked and verified and the claim petition is liable to be dismissed.

4. The opposite party No. 2, owner of the offending bus also filed his written statement and alleged that the accident has occurred due to some mechanical defect of the vehicle. He also alleged that at the time of accident the bus was having valid insurance, registration, fitness etc. and the driver was possessing valid driving license.

5. The learned Tribunal on the pleadings of parties, framed relevant issues in the claim petition. Thereafter, parties adduced evidence in support of their case. The learned Tribunal, after hearing learned Counsel for the parties and considering the material on record, awarded a sum of Rs. 25,000/- as compensation along with an interest @ 9% per annum from the date of filing the petition till the actual date of payment against the United India Insurance Company.

6. Feeling aggrieved the United India Insurance Company has preferred this appeal, before this Court.

7. Heard Sri K.K. Shah, learned Counsel for the appellant. None has appeared on behalf of the respondents in spite of sufficient service of notice upon them.

8. The short controversy involved in this case is ''as to whether the "mule" who died during the course of accident, comes within the purview of "person" or not.''

9. Learned Counsel for the appellant has invited my attention towards various provisions of the Motor Vehicles Act, 1988, which envisage that the compensation shall be awarded In respect of accident involving the death of, or bodily injury to, persons arising out of the use of the motor vehicles. Learned Counsel for the appellant has also invited my attention towards the provision of Section 147(2), which reads as follows:

147(2) -- Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability Incurred in respect of any accident, up to the following limits, namely--

(a) save as provided in Clause (b), the amount of liability incurred,

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of sub policy whichever is earlier.

10. The aforesaid provision makes it clear that in respect of damage to any property of a third party the limit to pay the amount of compensation shall be Rs. 6.000/-. The mule does not come within the purview of the ''person'' as the

meaning of the ''person'' given in Oxford English Dictionary is ''a living human being''. Further, in Webster''s Third New International Dictionary a ''person'' means -- ''an individual human being'', ''a human being as distinguished from an animal or thing'' and ''the individual personality of a human being''.

11. Perusal of the impugned judgment and award shows that the Tribunal has awarded a sum of Rs. 25,000/- on account of the death of the mule as well as damage to the goods belonging to the claimant Gyan Lal. The impugned judgment and award also reveals that a sum of Rs. 20,000/- has been awarded on account of the death of mule while Rs. 5,000/- on account of damage to the property owned by Gyan Lal.

12. Section 165 of the Motor Vehicles Act says that the State Government by way of notification in the official gazette constitute the Motor Accident Claim Tribunal for the purpose of the death of, or bodily injury, to persons, arising out of the use of the motor vehicles, or damages to any property of a third party so arising, or both. This aforesaid provision clearly indicates that the Tribunal shall award the compensation in respect of the accident involving the death or bodily injury to a person arising out of the use of the motor vehicle. It further indicates that the compensation shall also be awarded in respect of the accident involving the damages to any property of the third party.

13. In the instant case the claim petition is with regard to the compensation on account of the death of a mule as well as damage to the property of third party, i.e. the claimant. The mule in any case is not covered by the word ''person'', as it is not a human being. At the best the mule can be said to be the property, and in case if mule is covered within the word ''property'', then in view of the provision of Section 147(2)(b) of the Motor Vehicles Act, the limit of the insurance company cannot travel more than Rs. 6,000/- with regard to the damages of any property of a third party.

14. Therefore, the Claims Tribunal has fell in error in awarding the compensation for a sum of Rs. 20,000/- on account of the death of mule in the accident. As the mule does not come within the purview of a ''person'', therefore, the insurance company is not liable to pay the amount of compensation more than Rs. 6,000/- in any case, which IS the limit pertaining to the damages of the property of a third party.

15. For the reasons stated above, I am of the view that the impugned judgment and award passed by the Tribunal, is liable to be modified to the extent that the insurance company is liable to pay the amount of compensation to the claimant up to the tune of Rs. 6,000/- only. The amount so awarded, i.e. Rs. 6,000/- in favour of the claimant shall be paid by insurance company along with interest @ 9% per annum from the date of filing the petition till the date of actual payment.

16. Accordingly, the appeal is allowed. The impugned judgment and award dated 6-9-2002 is modified up to the extent that the claimant shall be paid compensation of Rs. 6,000/- along with interest @ 9% per annum from the date

of filing the petition till the date of actual payment, by the insurance company, instead of Rs. 25,000/-along with interest @ 9% per annum, as has been awarded by the Tribunal.

17. The statutory amount deposited by the appellant in this Court at the time of admission of appeal, be remitted to the Tribunal concerned.