(1997) 01 AHC CK 0050

In the Allahabad High Court

Case No : F.A.F.O. No. 121 of 1988

United India Insurance Co. Ltd. — APPELLANT

Vs

Ram Rati and Others — RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21
Motor Vehicles Act, 1939 — Section 92A

Citation : (1997) ACJ 1124 : (1997) 2 AWC 1216

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : Vinod Saran, for the Appellant; Shambhu Chapera, S.D.N. Singh and Devendra Dohma, for the Respondent

Final Decision : Allowed

Judgement

G.S.N. Tripathi, J.—This is a first appeal against the judgment and order dated 11.11.1987 passed by the Motor Accidents Claims Tribunal/Special Judge (E.G. Act), Banda, whereby the learned Tribunal has granted a compensation of Rs. 24,000/- plus Rs. 1,000/-- being the price of the medicines, in all Rs. 25,000/- against the appellant, arrayed as defendant No. 3, before the learned Tribunal. He has also awarded an interest at the rate of 10 per cent per annum.

2. The petitioners'' claim, mainly, is that jeep No. URE 730 was owned by defendant No. 1, now arrayed as respondent No. 3 in the present appeal. The deceased Prem Narain Gupta, aged about 9 years along with others was travelling in the said jeep from Atarra to Banda and met with an accident on the same day, i.e., 13.6.1985 at about 11.45 a.m. The jeep was being driven by respondent No. 3, Sheo Singh alias Kalloo Singh in a very rash manner and the accident was caused on account of this rash and negligent driving on his part. The deceased Prem Narain Gupta received fatal injuries and on account of that, he died on 16.6.1985 at 9.45 p.m. During the course of treatment, the petitioners spent Rs. 1,000/- as price of the medicines etc. The boy used to

render help in the family business. He was dependent upon the petitioners. Thus they claimed damages to the tune of Rs. 1,00,000/-.

3. Sheo Singh in his written statement has denied the allegation of rash and negligent driving. He says that the jeep was registered with United India Insurance Co. Ltd., Banda and the insurance company is liable to pay the compensation. The jeep was a private vehicle and was not authorised for hire purposes. The death occurred on account of improper treatment made available to the deceased. The deceased was travelling in the jeep out of his free will without payment of any reward and, therefore, Sheo Singh is not responsible to pay the damages. The insurance company has paid Rs. 4,800/- by way of compensation ex gratia.

4. The opposite party No. 3, United India Insurance Co. Ltd., has denied the allegations of the petitioner. It is not denied that the deceased was travelling by this jeep. The driver had no proper driving licence at the time of the accident. The deceased was not in a position to earn anything. The insurance policy in favour of Sheo Singh does not cover passenger''s risk. Sheo Singh has committed a breach of terms and conditions of the insurance policy by earning hire from passengers. Hence liability of compensation cannot be fixed upon the insurance company. The petitioners are not entitled to get any compensation from the insurance company u/s 92-A of the Motor Vehicles Act, 1939.

5. The learned Tribunal while deciding issue No. 1, held that the accident was caused on account of rash and negligent driving of Sheo Singh. While deciding issue No. 3, the learned Tribunal observed that it was covered by the finding on issue No. 1. A decree in the sum of Rs. 25,000, by way of compensation was ordered to be paid by the opposite party Nos. 1 to 3. Further, he held that the insurance company was liable to pay the whole amount of compensation to the claimants.

6. This way, the claim petition was decreed for a sum of Rs. 25,000/- only.

7. Feeling aggrieved, the insurance company has filed this appeal.

8. Cross-objections were filed by the petitioners also praying for an enhanced compensation.

9. The appeal petition as well as the cross-objections have been argued and heard together.

10. In this Court, under the provisions of Order 41, Rule 21, Civil Procedure Code, some documents were filed by the appellant, including the policy cover, the agreement being between the insurance company and Sheo Singh. In response to this, the opposite party has not filed any document by way of rebuttal. Nor has he challenged the plea.

11. The main point for consideration in this insurance bond is as follows:

The policy covers use for any purpose other than:

(a) Hire or reward.

This way, the insurance company has argued that since the owner Sheo Singh has made a breach of agreement between the company and himself, therefore, the company is not liable to pay any compensation in this case and the entire liability still rests upon Sheo Singh.

12. The claimant Ravi Prakash Gupta, the brother of the deceased filed an F.I.R. on 13.6.1985, in which he has alleged that in the aforesaid jeep, apart from deceased, others were also sitting after having paid Rs. 15/- per head as hire for the travelling. Even in the statement before the learned Tribunal, it was alleged by the claimants that jeep No. URE 730 was hired by the deceased Prem Narain Gupta and others at Atarra for completing their journey up to Banda. This way, the owner of the jeep Sheo Singh has committed a complete violation of the term of the agreement in the shape of policy bond, which prohibited the owner Sheo Singh from using his vehicle for hire or reward. Once this breach was made by Sheo Singh, the contractual liability of the insurance company to cover the risk came to an immediate end. There is a conclusive finding of fact recorded by the learned Tribunal which is based on the evidence on record that the accident was result of rash driving by Sheo Singh. I have also examined the evidence from this angle and I find that it has been conclusively proved that the vehicle in question was being used at the time of accident for earning hire charges. Therefore, I find that there was no liability of the insurance company to pay any amount to the claimants. However, the liability of Sheo Singh to pay the entire amount is conclusively proved from the evidence on the record.

13. This way, the chapter of liability of the insurance company, the appellant, for payment of compensation ends.

14. From the evidence on the record, it is also established that Sheo Singh was driving the vehicle for hire and it was on account of his negligent and rash driving that the young boy of 9 years lost his life and the claimants lost their ray of future hope. I further find that the learned Tribunal has recorded a finding on the basis of evidence available with him, which has not been even challenged before me. So the liability for payment of Rs. 25,000/- as decreed by the learned Tribunal is confirmed and it is held that the amount shall be recovered from Sheo Singh alone.

15. As regards the amount of compensation, I find that it errs on the side of being higher than legally permissible. The entire uncertain future was waiting for the deceased Prem Narain Gupta. There was no evidence on the record that he was a good student or he had a meritorious record. The claimants, who were the guardians of the deceased, were still to invest a lot of money and resources for bringing up this child and making him competent to earn his livelihood. He was totally dependent upon them for his bread etc. What amount he could have earned, cannot be assessed at this stage. Therefore, the learned Tribunal has, out of liberal considerations and compassion, awarded a sum of Rs. 25,000 only

to the claimants and I think that it is sufficient. It does not deserve to be further enhanced. The cross-objection fails.

16. The appeal is allowed. The appellant insurance company is totally exempted from the payment of any compensation for the death of the deceased Prem Narain Gupta. However, the liability to pay totally rests on the shoulders of Sheo Singh alone and the entire amount shall be recoverable from him alone. The appeal is accordingly decided with the modification aforesaid. The sum of Rs. 15,000/- drawn by the claimants may be adjusted and the appellant may recover it from Sheo Singh.

17. The cross-objections have no force. On analysis, I find that there was no material on record to entitle the claimants to get a higher amount. The cross-objections are accordingly dismissed. Cost easy.

