
(2011) 07 UK CK 0196

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1179 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Ramsukhi and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170

Citation : (2011) 07 UK CK 0196

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.

Heard.

1. By means of this writ petition, the Petitioner has prayed for setting aside the impugned order dated 29-9-2005 (Annexure No. 1) passed by the District Judge Nainital, whereby the application (paper No. 85-C) moved by the Insurance Company for comparison of the signatures of the claimant Ramsukhi from paper No. 11-Kha has been rejected. The Petitioner has further prayed that proceeding of Motor Accident Claim Petition No. 65 of 2000, Smt. Ram Sukhi and Ors. v. Ziya-ul-Haque and others be stayed.

2. By a perusal of the service report, it is obvious that Respondent No. 4-owner of the vehicle has been sufficiently served.

3. So far as claimants-Respondent Nos. 1 to 3 are concerned, they are represented by Mr. Z.U. Siddiqui, Advocate.

4. From a perusal of the impugned order dated 29-9-2005 it is evident that the learned Tribunal has heard both the parties on the application. The Petitioner-opposite party No. 2 moved an application (paper No. 85-C) asserting therein that as per order dated 25-11-2003 passed by the Tribunal, the signatures of the

claimant Ramsukhi be compared with the signatures put by her on paper No. 11-Kha so as to ascertain whether there has been collusion between the claimant Ramsukhi and the opposite party No. 1-owner of the vehicle and that in case of collusion between the claimant and the owner of the vehicle, the Insurance Company can take all the defence available to the insured u/s 170 of the Motor Vehicles Act 1988 (for short the Act).

5. In the order dated 25-11-2003, the learned Tribunal has observed that the claim petition u/s 166 of the Act and the written statement paper No. 11-Kha filed on behalf of the owner of the vehicle-O.P. No. 1 have been typed by one and the same type-writer. It was also noticed by the Tribunal that the written statement (11-Kha) bears the signatures put by the claimant and an attempt has been made to erase them by black ink and subsequently the owner of the vehicle has put his signatures on paper No. 11-Kha. It was also observed that the alleged signatures of Ramsukhi are not clearly visible on paper No. 11-Kha. The opposite parties have contended that these facts are sufficient to prove collusion between the claimant and the owner of the vehicle. Ultimately, the learned Tribunal has passed an order suo motu that the signatures of the claimant be got compared with the signatures, which were overlapping by ink on the written statement filed by the owner of the vehicle (paper No. 11-Kha).

6. The learned Tribunal after considering the fact that the application 85-C, which was moved by the Insurance Company on the ground that there is collusion between the claimant and the owner of the vehicle was allowed by the Tribunal by order dated 25-11-2003 has, therefore, held by the impugned order dated 29-9-2005 that now there is no need to compare the signatures of the claimant, after the application u/s 170 of the Act was allowed.

7. Lower court record was summoned in this case, which is before me.

8. It transpires from a bare perusal of the paper 11-Kha that some signature of the claimant was overlapped by black ink and the owner of the vehicle put his signatures on the said paper No. 11-Kha.

9. This fact has not been disputed by the claimant and the Tribunal has not observed in its order that this signature was put after filing the written statement by the owner. If the signature had been overlapped by black ink and the owner of the vehicle on whose behalf the written statement was filed had put his signature on the written statement before filing it in the Court, then the Tribunal cannot pass such type of order for comparison of signatures. There is no finding to the fact that the alleged signature has been overlapped during the course of proceedings. It is true as has been observed by the Tribunal that there appears a collusion between the claimant and the owner of the vehicle and for that reason the application u/s 170 of the Act was allowed by the Tribunal. Even otherwise, if the application of the Petitioner (paper No. 85-C) is allowed, it will only prove the fact of collusion between the claimant and the owner.

10. Having heard the submissions of learned Counsel for the parties, I am of the

view that the application 85-C has been rightly rejected by the learned Tribunal. The impugned order dated 29-9-2005 does not call for any interference by this Court in writ jurisdiction.

11. In the result, the writ petition is dismissed. The claim petition (M.A.C.P. NO. 65 of 2000) is pending since the year 2000 and the proceedings of the claim petition are held up as the lower court record had been summoned in this writ petition. Therefore, the learned Tribunal is directed to decide the claim petition on merits in accordance with law, expeditiously as far as possible. Unnecessary adjournments shall also be avoided. However, it is provided that the Petitioner-Insurance Company may adduce all possible evidence on the basis of its pleadings raised in the written statement.

12. Lower court record be returned to the Tribunal concerned.