(2016) 10 UK CK 0012

In the Uttarakhand High Court

Case No : Appeal from Order No. 134 of 2009

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Naresh Kumar RESPONDENT

Date of Decision : 01-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 163

Citation : (2017) 1 ACC 446 : (2017) 120 ALR 155 : (2016) 4 TAC 347

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Pankaj Purohit, Advocate, for the Appellant; Mr. Mohd. Azim, Advocate, for the Claimants/Respondent

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J. - By way of this appeal, the judgment and order dated 21.2.2009, rendered by the Motor Accident Claims Tribunal, Dehradun, has been challenged whereby a compensation of more than rupees sixteen lakhs along with interest @ 9 per cent per annum from the date of institution of the petition has been granted in favour of the claimants.

2. Having heard learned Counsel of the appellant as well as learned Counsel for the claimants/respondents, who are the real contestants, it transpires that the accident occurred on 25.7.2003 at 6.30 ? 7.00 AM on the Rajpur Road, Dehradun when Mr. Surendra Kumar, a 52 years old man working in the State Bank of India, was hit by the offending vehicle and as a consequence thereof, he became seriously injured and succumbed to the injuries during the course of his treatment in the Doon Hospital. He left behind his wife Smt. Naresh Kumar (aged 46 years), daughter Km. Payal (aged 21 years) and son Master Rakshit (aged 19 years) and they jointly filed the claim petition No. 163/2005 on 19.1.2005.

3. Initially, the petition was presented only against one Mr. Vinod Goel, R/o Delhi, pleading him to be the owner of Maruti Car/Van No. "DL-2CH-0004". Mr. Goel

appeared and presented his written statement disclosing that he had already sold such vehicle on 5.7.2003 to one Mr. Guman Singh, also a resident of Delhi. So, the Tribunal sent the notice to Guman Singh. He appeared and presented his written statement, wherein he accepted the factum of having purchased that vehicle as well as the insurance cover of said vehicle on the relevant date and time, but he denied any such accident from his vehicle.

However, when Guman Singh disclosed that his vehicle although did not cause any accident, but was covered with the United India Insurance Co. Ltd., then such insurer was also impleaded as an opposite party and notice was issued to it. Insurance company presented its written statement along with all the relevant papers, inasmuch as the papers showing lodging of the FIR on the same date of accident within two and half hours at the concerned police station by one Mr. Taneja, resident of Doon City for the offences of Section 179, 304A IPC. The report did not disclose the name of any offender/driver, while Mr. Taneja had come to know all the relevant facts during his visit to the hospital to see the injured Surendra Kumar. It was also stated in the report that on the place of accident, people had gathered who carried the injured to the Doon Hospital. The matter was investigated and the Sub Inspector concerned filed the closure report No. 6/2003 dated 16.11.2003, i.e. after almost four months of the accident.

4. The final report so submitted by the Investigation Officer disclosed that during the investigation, eyewitness of the accident was searched, but none was found and the vehicle number which was submitted by the informant could not be traced. It was further clarified that the informant himself did not find the correct number of the vehicle which was involved in the accident. Hence, ultimately he also could not find out the particulars/number of the vehicle, which was involved in the accident.

5. The notice was sent to the informant/claimants, but it appears that for want of any response on their behalf, the Magistrate was constrained to accept that final report on 7.1.2004.

6. In this backdrop, the petition proceeded and claimants produced one Mr. Anirudh Malik, resident of Dehradun City, as their witness on 17.3.2008. He has stated on oath that he was the eyewitness of the accident and disclosed even the vehicle number and all relevant details of the accident to the widow of Surendra Kumar.

Further, he has deposed that the driver of the Maruti Van was chased and apprehended at the spot, who disclosed his name as Yogamber Singh, resident of a village in Pauri Garhwal (a hill district). Even further, it was stated that the offending vehicle was brought to the nearby police outpost along with its driver.

7. When the facts were so manifested in the statement of Anirudh Malik, soon an application 52B was moved by the claimants on 27.3.2008 to implead Mr. Yogamber Singh as a necessary party. This application was allowed and the so-called driver Mr. Yogamber Singh was impleaded in the whole fray vide order

dated 7.4.2008.

8. Notices were sent and Mr. Yogamber Singh prepared his written statement on 19.5.2008; filed the same on 20.6.2008 accepting that he was driving such Maruti Car/Van on the relevant date and time. Since such car was covered under the insurance, hence the Presiding Officer of the learned Tribunal has awarded the compensation as afore stated.

9. Having heard the contentions, this Court feels that the whole case has been concocted and it is nothing but a cock and bull story for grabbing the public money from the insurance company.

10. Undoubtedly, the accident occurred on the relevant date and time and Surendra Kumar lost his life, but all this cannot give the liberty to the claimants or the witness Anirudh Malik or Yogamber Singh to frame an apparently cooked up story, which cannot be digested by anyone.

11. Following points are worthy to be considered which give clear reflection of the finding of this Court as above:

(i) After the accident on 25.7.2003, the petition was presented after one and half years of such accident, while Mr. Surendra Kumar lost his life soon after and meanwhile the claimants had prepared Mr. Vinod Goel, R/o Delhi, who was initial owner of Maruti Car, as afore stated. When Mr. Vinod Goel revealed that he had sold the car on 5.7.2003 and it was covered for any accident, then Guman Singh appeared, who is also a resident of Delhi itself. However, Guman Singh denied any such accident from his car/van, whatsoever. But since the name of United India Insurance Company was countenanced in the written statement of Guman Singh, therefore, the claimants could be able to implead such insurer.

(ii) In the pleadings, it was nowhere disclosed that Yogamber Singh was driving the offending vehicle, while Anirudh Malik (PW3, witness of the claimants itself), for the first time disclosed the name of Mr. Yogamber Singh. He has also deposed that the entire facts were in the notice of the widow of the deceased. That apart, the informant Mr. Taneja, who gathered all the facts from the widow of the deceased, but he did not mention the same in the FIR lodged by him soon after the occurrence.

(iii) If the driver after being chased was apprehended at the spot, inasmuch as carried to the concerned police outpost, then there was no reason for the claimants or Mr. Taneja nay Mr. Anirudh Malik to be in oblivion about the name and particulars of the driver. It shows that they have built up this whole story to grab the money of the insurance company.

(iv) Even beyond that, when the Investigation Officer of the police proceeded with the investigation and recorded the statement of Smt. Naresh Kumar, the name of no such driver was disclosed by her. Even it was found that no eyewitness at the spot could be found and the registration number of the vehicle suggested by the claimant was also found to be false. The closure report was accepted after issuing the notice to all concerned. No objection against that report was ever raised.

(v) Mr. Yogamber Singh was never produced before the Tribunal, so he was not examined much less to face any cross-examination at the hands of the Counsel of the insurance company. He himself could not muster courage to come before the Court for his examination and disappeared after filing the written statement along with photocopy of the driving license.

12. In view of what has been stated above, I feel that claimants have made every endeavour by using false tactics to grab the public money, which cannot at all be sanctioned by this Court. Since the accident had occurred and Mr. Surendra Kumar lost his life, but the offending vehicle is still unknown, therefore, they shall be entitled to claim the payment of compensation under Section 163 of Motor Vehicles Act by moving an application to the appropriate authority, so it is purely a case of hit and run, as envisaged under the law.

13. Consequently, I allow this appeal and set aside the impugned judgment/ order indicated in the 1st paragraph herein above.

14. A coordinate Bench of this Court, vide its order dated 17.9.2010, had already directed to release rupees four lakhs to the claimants. Tribunal concerned shall return the remaining amount, along with the interest which it had earned, to the insurance company. Insurance company is granted liberty to recover the money, which has been released, in favour of the claimants, but without any interest.

Let the lower court record be sent back.

